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**PROCEEDINGS FOR OCTOBER 13, 2021**

(The following took place in open court with the defendant present, but without the jury present.)

**THE COURT:** Please be seated. The Court is back on the record in Criminal Action No. 2:21-CR-25, United States of America versus Bart Wade Reagor.

My law clerks have left a helpful note on the chambers door: Don't forget the jury.

**(Laughter.)**

**THE COURT:** It's a little bit like that sticky note that they put on the button in the *Apollo 13* movie, not to jettison the other astronauts.

Okay. So we won't forget the jury. I wanted to give the parties this Court's time so they can make use of what remains. So, by our calculations, the Defendant has used 196 minutes, or three hours and sixteen minutes. The Government has used 142, or two hours and twenty-two minutes.

So we are making good progress. The attorneys are making efficient use of the time allotted. And if you need another time check midday or at the end of the day, we're able to do that as well.

Now, Mr. Haag, I anticipate your next witness is Mr. Reinhart; is that correct?

**MR. FRAUSTO:** That's correct, Your Honor.

**THE COURT:** Okay. And, Mr. Frausto, you'll be

1 taking this witness?

2 MR. FRAUSTO: Yes, Your Honor.

3 THE COURT: Okay. So we'll follow the same pattern  
4 from yesterday because of the anticipated impeachment  
5 evidence.

6 I'll give the instruction to the jury before you  
7 call the witness. I'll explain how some of that may seem  
8 atypical, but it's within the rules, and I'll give them the  
9 limiting instruction on how it is to be considered.

10 If the parties think it's advisable, I can repeat  
11 that after the witness completes his testimony.

12 Is there anything else we need to do before you  
13 call your witness?

14 MR. FRAUSTO: No, Your Honor.

15 THE COURT: Okay. At this point -- oh, yes?

16 MR. COGDELL: I might add that we have made the  
17 decision not to call Mr. Dykes, so that -- I just wanted to  
18 give the Court that heads-up.

19 THE COURT: Okay. And I'm also cognizant of your  
20 conference in your other pending matter, so it's my intention  
21 to take a break at 11:30 --

22 MR. COGDELL: Great.

23 THE COURT: -- to give you bandwidth to do that,  
24 and if you need to use our facilities, we have multiple land  
25 lines available.

1           **MR. COGDELL:** And I spoke to your clerk earlier, if  
2 I could get a land line number to e-mail to Judge Lake's case  
3 manager.

4           **THE COURT:** Okay. I'll work through my courtroom  
5 deputy and make sure you have all of that.

6           **MR. COGDELL:** Thank you so much.

7           **THE COURT:** Okay. So we'll call in the jury at  
8 this point.

9           **COURT SECURITY OFFICER:** All rise for the jury.

10           **(The jury returned to the courtroom.)**

11           **THE COURT:** And please be seated. Members of the  
12 Jury, similar to the witness testimony yesterday, I  
13 anticipate that the following witness will make reference to  
14 prior convictions and some criminal records. That would not  
15 typically be admissible, but here it is being used for  
16 impeachment purposes only, so I will give you the instruction  
17 on how you are to consider that evidence, whether elicited  
18 through testimony or any court documents that -- I'm sorry,  
19 any documents that the Court admits relevant to those prior  
20 convictions.

21           You will hear testimony and questions about Steven  
22 Reinhart's prior conduct, some of which is criminal in  
23 nature. You are instructed only to consider information  
24 about other crimes and conduct in weighing the credibility of  
25 this witness.

1           The defendant has not been charged in the same  
2           schemes or crimes as this witness. This case is not about  
3           those same crimes or acts.

4           His prior history and current criminal charges are  
5           only relevant to the witness' credibility and should only be  
6           considered for those limited purposes. You should not  
7           consider Steven Reinhart's prior criminal conduct as evidence  
8           of Bart Reagor's guilt or his innocence. So, again, this  
9           goes to credibility.

10           This is based on Federal Rule of Evidence 609(a)  
11           and 608, and that instruction is based on the Fifth Circuit  
12           Pattern 1.12.

13           At this point, Mr. Frausto, you may call your next  
14           witness.

15           **MR. FRAUSTO:** Call Steven Reinhart, Your Honor.

16           **(Pause.)**

17           **THE COURT:** Mr. Reinhart, you may approach the  
18           witness chair. Please remain standing for administration of  
19           the oath. My courtroom deputy will do the oath.

20           **(The witness was sworn by the courtroom deputy.)**

21           **THE COURT:** Please be seated. You may remove your  
22           mask if you are comfortable doing so. Please speak clearly  
23           into the microphone, and you may pull that microphone closer,  
24           if necessary.

25           Mr. Frausto, you may proceed.



1                   **MR. FRAUSTO:** Thank you, Your Honor.

2                                   **STEVEN REINHART,**

3                   having been first duly sworn, testified as follows:

4                                   **DIRECT EXAMINATION**

5                   **BY MR. FRAUSTO:**

6                   Q. Can you please state your name for the record.

7                   A. Steven Anthony Reinhart.

8                   Q. And can you describe your educational background for the  
9                   jury.

10                  A. I attended high school and graduated high school from  
11                  Eldorado High School in Albuquerque, New Mexico.

12                  I attended and graduated with a Bachelor's Degree from  
13                  Texas Tech University in public relations, and I received a  
14                  Juris Doctorate from Texas Tech University in the spring of  
15                  1992.

16                  Q. And did you pass the bar exam in New Mexico in 1992?

17                  A. Yes, I did.

18                  Q. And how long did you practice law?

19                  A. I practiced law in New Mexico, in Albuquerque from '92  
20                  through about '96, and then again from 2011 through March  
21                  of 2014.

22                  Q. And between the gap of you practicing law, where did you  
23                  work from '96 to 2011?

24                  A. My dad and I had a construction company, New Mexico  
25                  Metal Systems, and I ran that for fifteen years.

1 Q. And how are you currently employment?

2 A. I'm employed at Fibertex, LLC.

3 Q. And what's your position there?

4 A. I am the special projects coordinator.

5 Q. And who owns that business?

6 A. Rick Dykes owns the business. Bart Reagor -- I mean,  
7 excuse me, Brandon Peters and Bruce Boyd run the business.

8 Q. And how do you know Rick Dykes?

9 A. He's my first cousin.

10 Q. And was Rick Dykes one of the owners of RDAG?

11 A. Yes.

12 Q. Now, let's turn your attention to when you were employed  
13 at RDAG. When did you go work for RDAG?

14 A. In March of 2014.

15 Q. And why did you decide to move to Lubbock, Texas and  
16 work for RDAG?

17 A. I got a call from Rick in January of 2014 saying that  
18 they were growing substantially quick, and they needed some  
19 help with the business.

20 So my wife and I went out there in March of -- well,  
21 February of 2014 and met with Mr. Dykes, Mr. Reagor, Shane  
22 Smith, and after discussion with my family decided that that  
23 would be a good move for me.

24 Q. And do you --

25 A. For us.

1 Q. I apologize.

2 A. And for us. Excuse me.

3 Q. And do you know Bart Reagor?

4 A. Yes.

5 Q. Do you see him in the courtroom today?

6 A. I do.

7 Q. Can you point him out and describe an article of  
8 clothing he is wearing.

9 A. He is on the end of the defense table wearing a gray  
10 suit and black tie.

11 THE COURT: Let the record reflect that the witness  
12 has identified the defendant.

13 Q. (By Mr. Frausto) What was your title and position at  
14 RDAG?

15 A. When I was hired in March of 2014, I was the legal/  
16 compliance manager.

17 Q. And were you later promoted?

18 A. Yes. In February 2016, I became the legal/compliance  
19 director, the facilities director, and the new construction  
20 manager.

21 Q. And what were your duties at RDAG at the end?

22 A. When I was at the end, I was overseeing as the director  
23 of facilities between 45 and 50 rooftops, and then we had up  
24 to nine new construction projects ongoing at that time.

25 And then I was also directing, supervising a couple of

1 attorneys working for the group.

2 Q. Did you serve as -- did you serve as an attorney for  
3 RDAG?

4 A. No, I did not.

5 Q. And were you even licensed in Texas to practice law?

6 A. No, never have been.

7 Q. And did the defendant and Dykes know you were not  
8 licensed in Texas when they hired you?

9 A. Yes, they did.

10 Q. And was your law license in New Mexico active during  
11 your employment at any point at RDAG?

12 A. No, it was not. I put it on inactive status when I  
13 moved to Lubbock.

14 Q. What was your role when legal issues occurred at RDAG?

15 A. I would work as a liaison between the group and outside  
16 counsel.

17 Q. And who was your immediate supervisor at RDAG?

18 A. Shane Smith.

19 Q. And you stated you supervised two attorneys. Who else  
20 did you supervise?

21 A. I supervised Troy Nicholson, who was an attorney  
22 licensed in the State of Texas, and Rachel Reagor, also an  
23 attorney licensed in the State of Texas.

24 And then I supervised my facilities crew, which included  
25 a manager and anywhere from 10 to 15 workers.

1 Q. Before we go through the rest of your testimony, let's  
2 first discuss your pending case that's -- that's pending.

3 Were you charged for Misprision of a Felony by an  
4 information?

5 A. Yes, I was.

6 Q. And did you plead guilty to that charge on  
7 February 24th, 2021?

8 A. Yes, I did.

9 Q. And have you been sentenced yet?

10 A. No, I have not.

11 Q. And you're facing up to three years in prison; is that  
12 right?

13 A. That is correct.

14 Q. Now, I'm not going to go through each document, but your  
15 Factual Resumé, did you provide auditors at the Lubbock  
16 Mitsubishi store with false sales dates on buyer orders to  
17 make Ford Motor Credit and its auditors believe that such  
18 vehicles were not sold out of trust?

19 A. Yes, I did, on wholesale units. They were intercompany  
20 cars. Yes, I did do that, yes.

21 Q. And, as part of your plea and as described in your Plea  
22 Agreement Supplement, did you agree to cooperate with the  
23 United States and provide truthful and complete information?

24 A. Yes, I did.

25 Q. And did the agreement also provide that, if you provide

1 full, complete, and truthful information and testimony, then  
2 the United States would not pursue any other charges against  
3 you that are related to your current charge?

4 A. That is correct, yes.

5 Q. And do you understand that, based on your truthful  
6 testimony, the United States may ask this Court for a lesser  
7 sentence for you?

8 A. Yes.

9 Q. But do you understand that ultimately your sentence is  
10 solely up to this Court, Judge Kacsmayk, as to whether to  
11 give you a lesser sentence for your testimony and as to what  
12 your ultimate sentence will be?

13 A. I fully understand that, yes.

14 Q. Now, I'd like to turn your attention to a working  
15 capital loan that RDAG received from IBC.

16 Were you present at a meeting in April 2017 when IBC  
17 representatives traveled to Lubbock, Texas to meet with RDAG?

18 A. No, I was not.

19 Q. When did you first become aware that RDAG was trying to  
20 get a working capital loan from IBC Bank?

21 A. When Shane Smith asked me to review documents related to  
22 the loan.

23 Q. And did you have a role in obtaining that loan?

24 A. Yes, I did.

25 Q. And what was your role?

1 A. With regard to the working capital loan, I reviewed  
2 documents, and there was also a consolidation of property  
3 loan, and I worked a little bit more diligently on that one  
4 due to the fact that I was the facilities director and had  
5 knowledge about all of the facilities that were held as  
6 collateral under that loan.

7 Q. And who served as the main point of contact from RDAG  
8 with IBC Bank?

9 A. Shane Smith.

10 Q. Did you ever meet or talk to IBC loan officers during  
11 this process?

12 A. No, I did not.

13 Q. And did you review all or a majority of the loan  
14 documents?

15 A. Yes.

16 Q. And who was the loan agreement between?

17 A. It was between D and R Acquisitions, LLC and  
18 International Bank of Commerce.

19 Q. And, based on your understanding and review of the loan  
20 documents, what was the purpose of the loan?

21 A. It was to consolidate the property debt as well as  
22 working capital for the company.

23 Q. Now, can you turn to Government's Exhibit 2. And this  
24 has already been pre-admitted into evidence.

25 A. Okay. Yes.

1           **THE COURT:** And, Mr. Cogdell, do you have your copy  
2 of Government's Exhibit 2?

3           **MR. POWELL:** Your Honor, we do.

4           **THE COURT:** Okay.

5           **Q. (By Mr. Frausto)** What is this?

6           **A.** This is the loan agreement between D and R Acquisitions,  
7 LLC and International Bank of Commerce.

8           **Q.** And did you review this loan agreement?

9           **A.** Yes, I did.

10          **Q.** Do you know if the defendant read this loan agreement?

11          **A.** I do not know if he read it.

12          **Q.** In the past, did you have to provide construction and  
13 facility loan documents to the defendant to sign?

14          **A.** Yes, I have.

15          **Q.** And did he read those loan documents prior to signing?

16          **A.** Very rarely, if at all, no.

17          **Q.** Now, did the defendant e-mail what has been called as  
18 the RDAG deal team, including yourself, prior to the IBC loan  
19 closing?

20          **A.** Yes.

21          **Q.** Now, did the defendant ever tell you or e-mail you that  
22 he planned to take a distribution from the working capital  
23 loan proceeds and place it in his personal banking account?

24          **A.** No, he did not.

25          **Q.** Did the defendant ever ask you or e-mail you if he could



1 take some of the working capital loan proceeds based on your  
2 review of the loan documents?

3 A. No, he did not.

4 Q. Now, I'd like to show you -- or can you turn to  
5 Government's Exhibit 41.

6 THE COURT: And Exhibit 41 is pre-admitted.

7 A. Excuse me, I'm having a hard time with the binder here.

8 Q. (By Mr. Frausto) It should be on your screen, Mr.  
9 Reinhart.

10 A. Okay. It is, yes.

11 Q. And are you copied on this e-mail?

12 A. No, sir, I am not.

13 Q. When was the first time you saw this e-mail?

14 A. The first time I saw this e-mail was during the criminal  
15 investigation.

16 Q. And have you read this e-mail since then?

17 A. Yes, I have.

18 Q. If you would have received this e-mail on May 31st,  
19 2017, what, if anything, would you have told the defendant?

20 A. I would have told him that you can't move the proceeds  
21 of that loan into personal or private accounts.

22 Q. Because it was supposed to be used for working capital?

23 A. That's correct.

24 Q. When did you first learn that the defendant diverted a  
25 portion of the IBC loan proceeds to his personal bank

1 account?

2 A. It was sometime after the -- I'm going to call it D-Day,  
3 the day that the dealerships kind of imploded.

4 Q. Okay. And -- but prior to the loan closing, did you  
5 know the defendant intended or planned to divert those funds?

6 A. No, I did not.

7 Q. Did you get compensated for reviewing the loan documents  
8 and for your help in securing this loan?

9 A. Yes.

10 Q. Now, Government's Exhibit 45 and 46, I won't go through  
11 them in detail, but are those e-mails that the defendant sent  
12 you --

13 Well, let me backtrack. Do you recall the defendant  
14 sending you an e-mail saying he's going to give you a bonus  
15 for your help on securing the loan?

16 A. Yes, I do. And those are those e-mails, yes.

17 Q. And that was after each closing -- is that correct -- or  
18 prior to each closing?

19 A. The e-mails were prior to each closing, and the bonuses  
20 were paid out after each closing.

21 Q. And how much were you ultimately paid?

22 A. \$10,000.

23 Q. And, again, in either of those e-mails where the  
24 defendant told you that you were going to receive an  
25 e-mail -- receive a bonus, did the defendant inform you that

1 he intended to take a portion of the loan proceeds for  
2 himself?

3 A. No.

4 Q. Do you know if that bonus came out of the IBC loan  
5 proceeds?

6 A. I do not know. No. No, I don't know.

7 Q. Was it common for you to receive a bonus after helping  
8 close a deal like this?

9 A. Yes, it was. I received bonuses occasionally.

10 Q. And how was your bonus treated on your wages?

11 A. It was -- it was taxed as compensation. It was -- it  
12 came as a full amount, the \$5,000 each closing. I got a  
13 \$5,000 check each closing, but, subsequently, the taxes were  
14 taken out of my payroll checks.

15 MR. FRAUSTO: I'll pass the witness.

16 THE COURT: And, Mr. Powell, you may proceed with  
17 cross-examination. I'll just instruct you to identify any  
18 exhibits by number for record purposes.

19 MR. POWELL: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. POWELL:

22 Q. Good morning, Mr. Reinhart.

23 A. Good morning.

24 Q. I don't think you and I have had an opportunity to meet  
25 before; is that correct?

1 A. We might have met a couple of times at some events way  
2 back.

3 Q. Okay.

4 A. I think they were social events way back.

5 Q. All right. I want to talk to you where you left off.  
6 You were talking about these bonuses that you got.

7 Have you ever been informed that those bonuses came from  
8 that distribution that was taken by Mr. Reagor and Mr. Dykes?

9 A. No, sir. I've never been informed that, no.

10 Q. Okay. You were shown Government's Exhibit 41 where it  
11 talks about those distributions, but they never talked to you  
12 about that part of that distribution was to pay those  
13 bonuses?

14 A. No, they did not.

15 Q. And I guess you never gave that money back?

16 A. No, sir, I did not.

17 Q. Okay. Let's talk a little bit about your role. Tell me  
18 again what your job description -- at the end of your  
19 employment with Reagor-Dykes, what was your job employment?  
20 What did you do?

21 A. I was the legal/compliance director; I was the  
22 facilities director, and the new construction manager.

23 Q. Okay. And I think you testified on direct examination  
24 that part of that was getting new contracts for buildings,  
25 for properties, and things of that nature; is that correct?

1 A. Yes, sir, that is correct. Yes, sir.

2 Q. And would you present those documents to Mr. Reagor for  
3 his purview?

4 A. Yes, I would.

5 Q. Would he read those documents?

6 A. Very rarely. I would point out things that were -- that  
7 he needed to look at if there was something in there.

8 Typically, they were standard, so he would not look at them.  
9 He would just sign them.

10 Q. Like, what would you point out to him?

11 A. Oh, if there was a situation like in construction  
12 documents for -- if there were any penalties that were going  
13 to be due, something along those lines, I'd discuss it with  
14 him. It was very rare. They're typically standard  
15 contracts.

16 Q. He trusted you to do the right thing on those documents,  
17 correct?

18 A. Yes, sir.

19 Q. And he had great faith in you to handle those  
20 construction documents, those loan agreements, and everything  
21 else; that's why he hired you?

22 A. Yes.

23 Q. I think you testified that you -- you weren't licensed  
24 to practice law in the State of Texas; is that correct?

25 A. That is correct.

1 Q. And you weren't hired as an attorney. You didn't give  
2 legal advice to Bart, did you?

3 A. No, I did not.

4 Q. Did you ever give legal advice to Rick?

5 A. No, sir, I did not.

6 Q. Did you give legal advice to anybody?

7 A. No, sir.

8 Q. Okay. But you're coming in here talking as an expert in  
9 what working capital is, is that what I understand?

10 MR. FRAUSTO: Your Honor, I'll object because  
11 that's misquoting. He is not testifying as an expert, just  
12 as a lay witness.

13 THE COURT: Just for purposes of clarification, I  
14 will sustain that objection. The parties have worked  
15 diligently to identify and pre-admit experts.

16 This is a fact witness, so just -- you may go into  
17 the content, of course, of his factual knowledge, but he is  
18 not a designated expert in this case.

19 MR. POWELL: That's what I was trying to point out,  
20 Your Honor. I agree. Thank you, sir.

21 Q. (By Mr. Powell) Mr. Reinhart, you're certainly not a --  
22 as the Court has said and everybody has said, you're not  
23 designated as an expert on what working capital is or  
24 anything of that nature?

25 A. No, sir, I'm not.

1 Q. You're just giving your opinion as a layperson?

2 A. Yes, sir.

3 Q. What is your opinion as to what working capital is?

4 A. Working capital is the day-to-day funds necessary to --  
5 for operations of an entity.

6 Q. Okay. Do you know what the definition of working  
7 capital is?

8 A. Not the -- not the Webster's definition, no, sir, I  
9 don't.

10 Q. Okay. Do you know what the accounting definition of  
11 working capital is?

12 A. No, sir, I don't.

13 Q. Do you know what the business definition of working  
14 capital is?

15 A. No, sir.

16 Q. When -- you talk about these -- as far as the financial  
17 stuff is that concerned, I think you were asked who was the  
18 point person between Reagor-Dykes and IBC. Who was that  
19 point person again?

20 A. Shane Smith.

21 Q. Based on your personal observations, did Mr. Reagor and  
22 Mr. Dykes have tremendous trust and faith in Shane Smith?

23 A. Yes, sir.

24 Q. Did they rely on him to take care of the finances of the  
25 business?

1 A. Yes, sir.

2 Q. Did they have -- not unlike you, did they have great  
3 faith in what he was presenting to them was the truth?

4 A. As far as I know, yes, sir.

5 Q. Based on your observations?

6 A. Based on my observation, yes.

7 Q. You reported to Shane Smith; is that correct?

8 A. That is correct, yes.

9 Q. And was he kind of -- I don't want to talk about -- I  
10 don't want to give -- I think it's been brought up as far as  
11 what plea you're here for. You pled guilty to what again?

12 A. To misprision of a felony.

13 Q. Okay. And what does that mean under your -- based on  
14 your understanding?

15 A. That I knew or should have known that a felony was being  
16 committed and did not do anything to stop it or report it.

17 Q. The reason you knew that is because you were committing  
18 a felony?

19 A. Yes, sir. I passed on some -- some bad dates on some  
20 audits, yes.

21 Q. Which you understand is fraud?

22 A. Yes.

23 Q. What -- do you understand as being an attorney what a --  
24 if you commit like a fraud, there's a -- there's a term of  
25 art called a crime of moral turpitude. Have you ever heard



1     that before?

2     A.   No, sir, I have not.

3     Q.   In all of your legal training, you don't know what that  
4     is?

5     A.   It's been a long time since I've practiced law, and I  
6     never practiced criminal law.

7     Q.   Okay. Do you remember it being -- remember hearing  
8     anything about it being something that involves deception?

9     A.   I don't recall.

10    Q.   And, certainly, the crime that you have been convicted  
11    of or that you performed there at Reagor-Dykes was a crime of  
12    deception?

13    A.   Yes.

14    Q.   And you pled guilty to that when?

15    A.   February of this year.

16    Q.   Okay. And you haven't been sentenced yet?

17    A.   No, sir, I have not.

18    Q.   So we're going on about eight, nine months that that has  
19    been pending, correct?

20    A.   Yes, sir.

21    Q.   What is your understanding of why you haven't been  
22    sentenced?

23    A.   My understanding is because I was testifying in this  
24    proceeding.

25    Q.   Okay. Your homework is getting graded today, right?

1 A. I have no idea. I honestly don't know.

2 Q. You were asked by the Government that, if you testify  
3 what they consider to be truthful, then you're not going to  
4 have any other charges charged against you?

5 A. Yes, that is correct.

6 Q. And you may get a motion filed by them asking that you  
7 get less time than the maximum?

8 A. Yes.

9 Q. So it's real important today as far as that's concerned,  
10 correct?

11 A. Yes, sir.

12 Q. When you -- and you gave a statement to the FBI in this  
13 case; is that correct?

14 A. I did.

15 Q. Do you remember telling them that Bart wasn't a  
16 financial guy?

17 A. I may have said that. I don't specifically recall  
18 saying that, but --

19 Q. And that's a true statement, is it not?

20 A. That is a true statement. He's not a financial guy.

21 Q. He relied on Shane to do that?

22 A. Yes.

23 Q. And who -- how did you know how to do this fraud  
24 involving the floor fraud; how did you know how to do that?

25 A. I was instructed how to do it by Shane and Brad Fansler.

1 Q. Okay. He was orchestrating all of that, correct?

2 A. Yes.

3 Q. Did you ever tell Mr. Reagor about that?

4 A. No, I did not.

5 Q. Did you ever tell Mr. Dykes about that?

6 A. No.

7 Q. And I think in your statement to the FBI, in hindsight,  
8 you wish you would have?

9 A. Yes, sir.

10 Q. Because they would have done something about it?

11 A. I would think so. I would hope so.

12 Q. And I think you also said in your statement that you  
13 were even physically intimidated by Mr. Smith?

14 A. Yes, sir.

15 Q. He had thrown fits of rage involving you, correct?

16 A. Yes.

17 MR. POWELL: Thank you, sir. I pass the witness,  
18 Your Honor.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. FRAUSTO:

22 Q. Just a couple of follow-up questions, Mr. Reinhart. Did  
23 you personally review the IBC loan documents?

24 A. Yes.

25 Q. Including the IBC loan documents related to the

1 \$10,000,000 working capital loan?

2 A. Yes, I did.

3 Q. And even though you didn't serve as an attorney for RDAG  
4 or provide legal advice, you were in charge and you  
5 supervised two attorneys that worked for RDAG?

6 A. Yes.

7 MR. FRAUSTO: I'll pass the witness.

8 THE COURT: Recross?

9 RECROSS-EXAMINATION

10 BY MR. POWELL:

11 Q. Were you practicing law without a license?

12 A. No, sir.

13 Q. But you're reviewing documents and giving legal  
14 opinions?

15 A. No, sir.

16 Q. Well, what were you doing?

17 A. I was reviewing documents, and I was -- with regard to  
18 these documents, I was reviewing to make sure that the  
19 collateral was correct and listed correctly, descriptions  
20 were listed.

21 With regard to the working capital, my primary goal was  
22 to make sure that the names were right and everything  
23 factually with regard to the documents was correct.

24 Q. The things that lawyers do?

25 A. I was not providing any legal advice.

1 Q. Okay. Did you ever -- and you've seen a series of  
2 e-mails that you were cc'd involving these IBC loan  
3 documents, correct?

4 A. Yes, sir.

5 Q. Did you ever one time say anything about any of those  
6 documents in any of those e-mails?

7 A. I think we might have had some grammar corrections, some  
8 misspelled words. I think that there were a couple of times  
9 that the names were not quite right. I think they had  
10 R and D a couple of times instead of D and R, something along  
11 those lines.

12 Q. Anything of any substance?

13 A. No, sir.

14 Q. Did you see in that document -- you said to -- during  
15 direct examination that you reviewed that document. Did you  
16 see where working capital was in there?

17 A. I don't specifically recall. I did review it, but it's  
18 been many years ago.

19 Q. Do you remember any definition of working capital in  
20 that document?

21 A. I don't remember seeing a definition of working capital.

22 Q. Do you remember anything about it?

23 A. No, sir, not really, not today.

24 MR. POWELL: Okay. I pass the witness, Your Honor.

25 MR. FRAUSTO: No further questions, Your Honor.

1 THE COURT: May this witness be excused?

2 MR. FRAUSTO: Yes, Your Honor.

3 THE COURT: Does the Defense object to this witness  
4 being excused?

5 MR. POWELL: No, sir.

6 THE COURT: You may step down. You are excused.

7 (Witness excused.)

8 THE COURT: Mr. Frausto, you may call your next  
9 witness.

10 In the interim, I will readmonish the jury on my  
11 instructions regarding prior convictions and criminal  
12 conduct. Please follow the Court's instructions and how you  
13 should give weight to that regarding credibility, but not  
14 otherwise.

15 At this point, I've instructed the attorneys that  
16 we will return to the Court's prior orders in limine and  
17 rules, and I don't anticipate the next witnesses will elicit  
18 impeachment questions. So, in a way, we're going back to the  
19 prior rules with the subsequent witnesses.

20 So, Mr. Frausto, you may proceed.

21 MR. FRAUSTO: Call John Whitworth.

22 THE COURT: Mr. Whitworth, you may approach the  
23 witness chair. Please remain standing for the administration  
24 of the oath.

25 (The witness was sworn by the courtroom deputy.)

1           **THE COURT:** Please take your seat, and remember to  
2 speak clearly into the microphone, and you may pull it closer  
3 if that helps.

4           And, again, Mr. Frausto, I'll admonish you to  
5 identify exhibits by number for record purposes.

6           **MR. FRAUSTO:** May I proceed, Your Honor?

7           **THE COURT:** You may proceed.

8                       **JOHN WHITWORTH,**

9           having been first duly sworn, testified as follows:

10                       **DIRECT EXAMINATION**

11           **BY MR. FRAUSTO:**

12           Q. Can you please state your name for the record.

13           A. John Whitworth.

14           Q. And what is your educational background?

15           A. I have a Bachelor's Degree in mechanical engineering  
16 from the University of Tulsa.

17           Q. And how are you currently employed?

18           A. Currently I am a senior financial investigator with  
19 Chenega Worldwide Support, and it is through that company  
20 that I work on a contract basis for the Federal Bureau of  
21 Investigation, or FBI.

22           Q. And how long have you been employed there?

23           A. A little over two years.

24           Q. And prior to your employment as a senior financial  
25 investigator, where were you employed?

1 A. I was -- prior to this job, I was employed as a special  
2 agent with the FBI for a little less than twenty-three years.

3 Q. And why did you leave the FBI?

4 A. I retired in 2019.

5 Q. And during your twenty-two to twenty-three years as a  
6 special agent with the FBI, what types of crimes did you  
7 investigate?

8 A. Primarily white-collar crimes, and that would include  
9 things such as healthcare fraud, mail and wire fraud schemes,  
10 public corruption, investment fraud, and bank fraud.

11 Q. And did you receive training and education from the FBI  
12 in investigating fraud cases, in particular bank fraud?

13 A. Yes, I did.

14 Q. And, prior to your retirement from the FBI in June 2019,  
15 did you serve as the lead case agent for the FBI in the FBI's  
16 investigation into RDAG?

17 A. Yes.

18 Q. And after you retired from the FBI and came back as a  
19 contract financial investigator, did you continue to assist  
20 with the investigation?

21 A. Yes.

22 Q. And, as part of your investigation into RDAG, what did  
23 you do?

24 A. I interviewed subjects and witnesses, and then I also  
25 collected, reviewed, and analyzed records such as bank



1 records and other business documents.

2 Q. Now, I'd like to turn your attention to the \$10,000,000  
3 working capital loan that IBC provided to D and R  
4 Acquisitions, LLC.

5 Did you look into where the loan proceeds went?

6 A. Yes. I traced those loan proceeds.

7 Q. And can you explain to the jury what is tracing.

8 A. In the context of fraud investigations, tracing is just  
9 the term that is used to describe the process of keeping  
10 track of specific funds that you're interested in, and that  
11 usually is typically the proceeds of fraud that are deposited  
12 into a bank account.

13 Q. And what is the goal of tracing?

14 A. So the goal of tracing is simply to determine what  
15 happened to the funds that you are interested in. And you  
16 could -- that could include finding that the funds were spent  
17 on some goods or services. That could also include finding  
18 that the funds were transferred to a different account or  
19 returned to the original source, or you could also find that  
20 the funds are still sitting in the original account into  
21 which they were deposited.

22 Q. And have you conducted tracing in other fraud  
23 investigations?

24 A. Yes.

25 Q. What is the simplest example of tracing?

1 A. The simplest possible scenario of tracing would be where  
2 the funds you're interested in or the fraud proceeds are  
3 deposited into an empty bank account where there's no money  
4 in it, and, in addition to that, no funds are added to it  
5 afterwards either.

6 And that's the best or simplest possible scenario,  
7 because, in that case, in order to determine what happened to  
8 the funds, it's simply a matter of looking at the withdrawals  
9 from the account to determine how the funds were spent, and  
10 that would be the checks, the outgoing wire transfers, the  
11 cash withdrawals, et cetera.

12 Q. And what would you call it if the funds you are tracing  
13 get deposited into another account that already has funds in  
14 that account?

15 A. We call that commingling.

16 Q. And what would you call it if the funds from other  
17 sources get deposited into an account once the funds you are  
18 tracing were already in there?

19 A. That's also called commingling.

20 Q. And so how do you distinguish commingled funds or  
21 dollars in a bank account?

22 A. You can't. Cash sitting in a bank account is fungible,  
23 which is just a fancy word for interchangeable. That means  
24 that all the dollars are identical. They don't have serial  
25 numbers, so you cannot tell them apart from each other.

1 Q. So when a dollar gets withdrawn from an account with  
2 commingled funds, how do you know where it came from?

3 A. So in a situation with commingling, the person  
4 conducting the tracing analysis has to use a tracing method,  
5 a logical tracing method and analyze every single withdrawal  
6 from that account.

7 And the method that they use will dictate whether or not  
8 that withdrawal consists of the funds you're tracing, which  
9 is the funds you're interested in, or funds from some other  
10 source or even possibly a combination or mixture of the two.

11 Q. Now, in this case, did you trace the working capital  
12 loan proceeds that IBC Bank provided to D and R Acquisitions,  
13 LLC?

14 A. Yes, I did.

15 Q. And, as part of your investigation, did you obtain  
16 records from several banks?

17 A. Yes.

18 Q. When tracing the working capital loan proceeds that IBC  
19 provided to D and R Acquisitions, did you review and analyze  
20 records that IBC Bank provided to the FBI?

21 A. Yes, I reviewed and analyzed IBC records.

22 Q. And would that include Government's Exhibits 1 through  
23 15?

24 A. Yes.

25 Q. When tracing the same working capital loan proceeds, did

1 you also review and analyze records that FirstCapital Bank of  
2 Texas provided to the FBI?

3 A. Yes, FirstCapital Bank records as well.

4 Q. And would that include Government's Exhibits 16 through  
5 23?

6 A. Yes.

7 Q. Again, when tracing the same working capital loan  
8 proceeds that IBC Bank provided to D and R Acquisitions, did  
9 you review and analyze bank records that Prosperity Bank  
10 provided to the FBI?

11 A. Yes.

12 Q. And would that include Government Exhibits 24 through  
13 30?

14 A. That is correct.

15 Q. Generally, can you tell the jury, what did you find by  
16 reviewing all of these bank records?

17 A. Generally, I found that some of the working capital loan  
18 proceeds went from IBC Bank to FirstCapital Bank of Texas to  
19 Prosperity Bank.

20 Q. Did some of those accounts contain money from sources  
21 other than the IBC working capital loan?

22 A. Yes, they did.

23 Q. So what did you do to trace the working capital loan  
24 proceeds?

25 A. Well, because of the commingling, I used logical tracing

1 methods. In this case, I used designated tracing and the  
2 float method of tracing.

3 Q. And using those tracing methods, what did you ultimately  
4 find?

5 A. Ultimately, I found that of the \$10,000,000 working  
6 capital loan proceeds that were issued or advanced to D and R  
7 Acquisitions, over \$1.7 million of that went into the  
8 defendant's account, personal account at Prosperity Bank.

9 Q. Now, I'd like to turn your attention to Government's  
10 Exhibit 31. This has been pre-admitted as demonstrative  
11 evidence only.

12 **THE COURT:** And I'll just briefly explain to the  
13 jury. So a demonstrative exhibit may be used by counsel; it  
14 may be referenced through witness testimony, but it will not  
15 go to the jury room as evidence.

16 You may review it, and they may publish it to you  
17 during this presentation, but it is not evidence, and it will  
18 not be an exhibit that is submitted to you in the jury room,  
19 but you may use it for reference purposes.

20 You may proceed.

21 **MR. FRAUSTO:** And if we could go ahead and pull it  
22 up, Mr. Haag.

23 Q. **(By Mr. Frausto)** What is Government's Exhibit 31?

24 A. Government's Exhibit 31 is a chart I created that  
25 summarizes what I observed from reviewing the bank records

1 that I collected in this case.

2 MR. FRAUSTO: And can we highlight the top half.

3 Q. (By Mr. Frausto) Looking at Government's Exhibit 31,  
4 what does the green and blue represent on this chart?

5 A. So on the left half of the chart, which is the green  
6 font and the green arrows, that represents Tranche 1, which  
7 was the first \$5,000,000 advanced to D and R Acquisitions in  
8 2017.

9 And then the -- on the right half of the chart, that  
10 represents Tranche 2, which is the second \$5,000,000 that was  
11 advanced to D and R Acquisitions in February 2018.

12 Q. And, again, is tranche just a fancy word for  
13 disbursement?

14 A. Yes, that's correct.

15 Q. Now, let's focus on the green first, Tranche 1. Looking  
16 at the chart, how much was the first tranche of the IBC  
17 working capital loan in July 2017?

18 A. It was \$4,967,555.54.

19 Q. And, looking at your chart, when was that amount  
20 disbursed?

21 A. On July 14th, 2017.

22 Q. When was the closing for the first \$5,000,000 loan?

23 A. It was one day before that, on July 13, 2017.

24 Q. Now, were you here through the testimony of Shane Smith  
25 where he walked the jury through the flow of the loan

1 proceeds from the IBC loan to the defendant, Bart Reagor?

2 A. Yes.

3 Q. And did Shane Smith accurately describe the movement of  
4 the funds up to the point where he issued the check to the  
5 defendant?

6 A. Yes, he did.

7 Q. Now, I'd like to discuss what happened to the loan  
8 proceeds once it went to the defendant. What happened to the  
9 \$766,277.77 in IBC working capital loan proceeds that were  
10 paid to the defendant?

11 A. Those loan proceeds were deposited into Prosperity Bank  
12 into an account ending in 7569.

13 Q. And how did you determine that?

14 A. I determined that from records we obtained from  
15 Prosperity Bank.

16 Q. Now, let's turn to Government's Exhibit 26, which has  
17 been pre-admitted. What is Government's Exhibit 26?

18 A. 26 is a series of monthly statements for this account we  
19 just referenced, Prosperity bank account ending in 7569.

20 Q. And what does Government's Exhibit 26 show?

21 A. It shows that on -- under the section that's labeled  
22 deposits/other credits, it shows that on July 17th, 2017  
23 there was a deposit for \$816,993.15.

24 Q. Now, let's turn to Government's Exhibit 27. This has  
25 been pre-admitted. What is this document?

1 A. This is the deposit detail for that deposit we just  
2 spoke about, the \$816,000 deposit, which occurred on  
3 July 17th, 2017.

4 Q. And what does it show at the top of Government's  
5 Exhibit 27?

6 A. So this first line or this first item at the top is the  
7 actual deposit ticket, and it shows the account number  
8 towards the bottom, the 7569, and then over on the right-hand  
9 column, there's a series of numbers, and it lays out what  
10 this deposit was made up of.

11 Q. And was it made up of two checks?

12 A. Two checks and a \$1,500 cash withdrawal at the same  
13 time.

14 Q. And was one of those checks the \$766,000 check from the  
15 IBC loan proceeds?

16 A. That is correct, it was.

17 Q. Now, going to the bottom of Government's Exhibit 27,  
18 what does this show?

19 A. This is the check in question, No. 6332, the \$766,000  
20 check from D and R Acquisitions real estate account to the  
21 defendant.

22 Q. And this was from the IBC loan proceeds?

23 A. Correct.

24 Q. And is this \$766,000 check that was deposited into the  
25 Prosperity bank account reflected on your flow chart on



1 Government's Exhibit 31?

2 A. Yes.

3 MR. FRAUSTO: If we could go back to Government's  
4 Exhibit 31.

5 Q. (By Mr. Frausto) And can you tell the jury where it is  
6 reflected on Government's Exhibit 31.

7 A. It's on the upper left of that screen shot right there  
8 (indicating).

9 Q. And is that Check No. 6332?

10 A. Yes.

11 Q. Now, let's focus on the Prosperity bank account that  
12 received these working capital loan proceeds from Tranche 1.  
13 In that Prosperity bank account, that's where ultimately the  
14 check went into --

15 A. Correct.

16 Q. -- correct?

17 A. Yes, sir.

18 Q. Did you obtain a signature card for Prosperity bank  
19 account ending in 7569?

20 A. I did.

21 Q. Now, let's turn to Government's Exhibit 25. And,  
22 generally, can you tell the jury what this is.

23 A. This is the signature card for Prosperity bank account  
24 ending in 7569.

25 Q. And what did you learn from reviewing this signature

1 card?

2 A. This is an account, a consumer account, not a business  
3 account.

4 Q. And when was this account opened?

5 A. July 26, 1994.

6 Q. And right here on the signature card, account purpose is  
7 consumer?

8 A. Correct.

9 MR. FRAUSTO: If we could go to the left side, Mr.  
10 Haag.

11 Q. (By Mr. Frausto) Why does the signature card say  
12 American State Bank if we're talking about Prosperity Bank?

13 A. Because the account was originally opened at American  
14 State Bank, but then American State Bank and Prosperity Bank  
15 merged in 2012, but the account number remained the same, and  
16 then the merged entity took on the name Prosperity Bank.  
17 This is a record we still got from Prosperity Bank.

18 Q. And who is the account holder of this account?

19 A. The defendant, Bart W. Reagor.

20 Q. And it says, POD. What does that mean?

21 A. That's a pay-on-death designation.

22 Q. And who is the beneficiary of the pay-on-death  
23 designation?

24 A. The defendant's wife, Annette Reagor.

25 Q. Is Annette Reagor also an authorized signer on this

1 account?

2 A. No, she's not.

3 Q. Who is the sole authorized signer on this account?

4 A. Just the defendant.

5 Q. Was the account opened with the defendant's social  
6 security number or with a tax ID number from one of the RDAG  
7 entities?

8 A. This account was opened with the defendant's social  
9 security number.

10 Q. And you stated this account was opened in '94. Based on  
11 your investigation, when was the first RDAG dealership  
12 created?

13 A. Not until 2003.

14 Q. What did you ultimately conclude or determine after  
15 reviewing Government's Exhibit 25 and other Prosperity Bank  
16 records?

17 A. Based on this signature card and other records from  
18 Prosperity, I concluded that this is the defendant's personal  
19 account, not a business account.

20 Q. And was it an account that the defendant used for his  
21 personal use?

22 A. Yes.

23 Q. Now, going back to when the \$766,000 in loan proceeds  
24 were deposited into the defendant's personal bank account at  
25 this Prosperity bank account, at the time of that deposit,

1 were there already funds from other sources in this account?

2 A. Yes. When the \$766,000 check was deposited into this  
3 account in July of '17, there was already a little over  
4 \$1.2 million sitting in that account at the time.

5 Q. And what were the sources of the other deposits going  
6 into the defendant's personal banking account at Prosperity  
7 Bank?

8 A. The other sources of funds going into this account  
9 primarily were checks from RDAG entities, such as Reagor Auto  
10 Mall.

11 Q. So since the loan proceeds were commingled with money  
12 from other sources, how did you trace the loan from here?

13 A. Here, I used the float method of tracing.

14 Q. And can you describe to the jury, what is the float  
15 method?

16 A. So the float method assumes that the funds you are  
17 tracing — in this case, the 766,000 — they float to the top  
18 of the account. So that with each withdrawal subsequent to  
19 that, those are the funds that are taken first. Regardless  
20 of what was in the account before and regardless of what is  
21 deposited afterwards, these funds are withdrawn first.

22 Q. And why did you use the float method of tracing here?

23 A. Because this float method is the most straightforward  
24 tracing method that I'm aware of.

25 Q. And when you used the float-tracing method, what did it

1 show?

2 A. Based on that tracing method, it showed that the entire  
3 \$766,000 that was deposited into this account was spent or  
4 withdrawn within the next six-week period, so from July 17th,  
5 2017 to August 28th, 2017.

6 Q. And, based on your review of the Prosperity Bank records,  
7 how was it -- how did the defendant spend the proceeds?

8 A. Those funds were spent on personal expenses, personal  
9 investments, and payments to family members.

10 Q. Now, let's turn to Government's Exhibit 29.

11 **THE COURT:** And Exhibit 29 is pre-admitted.

12 Q. **(By Mr. Frausto)** And, Investigator Whitworth, what is  
13 Government's Exhibit 29?

14 A. These are records we obtained from Prosperity Bank, and  
15 these are some of the checks. This is a multipage exhibit,  
16 but these are some of the checks. These are some of the  
17 checks that were written on the defendant's personal account  
18 at Prosperity from July 2017 through about mid  
19 September 2017.

20 Q. And looking on the first page of Government's  
21 Exhibit 29, the fourth check down, what is that?

22 A. That's a check written from the defendant's personal  
23 account at Prosperity on July 17th, 2017.

24 Q. And who is the check made out payable to?

25 A. To True Blue Pool Solutions.

1 Q. And what is the amount?

2 A. \$805.22.

3 Q. And do you know what True Blue Pool Solutions is?

4 A. It's a swimming pool cleaning service in Lubbock.

5 MR. FRAUSTO: Now, Mr. Haag, if we could go to the  
6 second page, third check down.

7 Q. (By Mr. Frausto) Investigator Whitworth, what is this?

8 A. This is a check written from the same account, the  
9 defendant's personal account at Prosperity on July 17th,  
10 2017.

11 Q. And was that the same day that the \$766,000 check of  
12 loan proceeds were deposited into the defendant's personal  
13 account?

14 A. Yes, it's the same day that those funds were posted, and  
15 the check was deposited.

16 Q. And who is this check made payable to?

17 A. The defendant's adult son, Riley Reagor.

18 Q. And what was the memo line?

19 A. It says, gift, mom and dad.

20 Q. And the amount?

21 A. \$50,000 even.

22 MR. FRAUSTO: Now, Mr. Haag, if we could go to the  
23 third page, first check at the top.

24 Q. (By Mr. Frausto) Investigator Whitworth, what is this?

25 A. This is a check written from the same account we've been

1 talking about, the defendant's personal account at Prosperity  
2 on July 20th, 2017.

3 Q. And is that three days after the defendant deposited  
4 766,000 in loan proceeds into his personal account?

5 A. Correct.

6 Q. And who is this check made payable to?

7 A. This one is made payable to New York Life Securities.

8 Q. And what does the memo line say?

9 A. It says, investment.

10 Q. And what was the amount?

11 A. This one was for \$500,000 even.

12 Q. And, based on your investigation, what was the nature of  
13 this investment?

14 A. These funds went into a brokerage account at New York  
15 Life Securities.

16 Q. And was it a brokerage account in the name of one of the  
17 RDAG entities?

18 A. No. It was a brokerage account in the defendant's name  
19 and his wife's name.

20 Q. So did this payment to New York Life Securities appear  
21 to be the defendant's personal investment?

22 A. Yes.

23 MR. FRAUSTO: Now, if we could go to the fourth  
24 page, Mr. Haag, first check at the top.

25 Q. (By Mr. Frausto) Investigator Whitworth, what is this?

1 A. This is a check written from the same account, the  
2 defendant's personal account at Prosperity on August 2nd,  
3 2017.

4 Q. And who is this check made payable to?

5 A. The defendant's wife, Annette Reagor.

6 Q. And what was the amount?

7 A. \$13,000 even.

8 Q. And what did the memo line say?

9 A. It says, August, and then a space, and then it says, RA  
10 2500, RY 1300, RI 1200.

11 Q. And, based on your review of all of the bank records at  
12 Prosperity Bank, what did that mean to you?

13 A. During my review of these bank records, I noticed checks  
14 very similar to this at the beginning of every month. They  
15 were all made payable to the defendant's wife for similar  
16 amounts and with similar notations on the memo line, and  
17 those were all indicators to me that this was some sort of  
18 monthly allowance check to the defendant's wife and adult  
19 children.

20 Q. Besides checks, did you see other types of withdrawals  
21 from the Prosperity bank account after the 766,000 was  
22 deposited into the defendant's personal account?

23 A. Yes. In addition, to the checks we've been discussing,  
24 I also saw electronic withdrawals from this account as well.

25 **MR. FRAUSTO:** Now, Mr. Haag, if we could go back to



1 Government's Exhibit 26.

2 Q. (By Mr. Frausto) And, Investigator Whitworth, can you  
3 tell the jury, again, what is Government's Exhibit 26?

4 A. Again, this is a multipage exhibit, but these are  
5 monthly statements for the defendant's personal account at  
6 Prosperity ending in 7569.

7 MR. FRAUSTO: And let's zoom in on the bottom half.

8 Q. (By Mr. Frausto) Using Government's Exhibit 26, can you  
9 provide the jury with an example of an electronic withdrawal  
10 that occurred after the defendant deposited the 766,000 in  
11 loan proceeds into his personal account.

12 A. So on the second transaction from the bottom there,  
13 which is July 18th, 2017, is an electronic payment to LP&L,  
14 which is the acronym for Lubbock Power & Light, which is the  
15 electricity provider down in Lubbock. And that one is in the  
16 amount of \$1,107.76.

17 Q. And what's underneath that payment?

18 A. The last transaction on that page is on July 21st, 2017.  
19 It's an electronic payment to American Express in the amount  
20 of \$7,627.92.

21 MR. FRAUSTO: And, Mr. Haag, if we could go to  
22 Page 2 at the very top, the top two lines.

23 Q. (By Mr. Frausto) And, Investigator Whitworth, what is  
24 shown on the screen?

25 A. So continuing on July 21st, 2017 from the first page,

1 these are two more electronic payments made from this  
2 account. The first one being to American Express in the  
3 amount of \$8,192.17, and the next one being an electronic  
4 payment to Chase credit card for \$12,151.32.

5 Q. And, based on your investigation, were these payments  
6 for the defendant's personal credit cards or company credit  
7 cards?

8 A. Personal.

9 Q. So, based on your tracing analysis, the checks and the  
10 electronic payments we just discussed, are those some of the  
11 examples of how the defendant spent some of the 766,000 in  
12 loan proceeds from his personal account?

13 A. Yes, those are some examples.

14 Q. Now, I'd like to turn your attention to Tranche 2 of the  
15 working capital loan now. When was the second closing of the  
16 IBC working capital loan?

17 A. February 27th, 2018.

18 Q. And, again, were you here through the testimony of Shane  
19 Smith where he walked the jury through the flow of the loan  
20 proceeds from Tranche 2 all the way to when he gave a check  
21 to the defendant?

22 A. Yes.

23 Q. And did Shane Smith accurately describe the movement of  
24 those funds up to the point where he issued a \$1,000,000  
25 check to the defendant from the loan proceeds?

1 A. Yes, he did.

2 Q. What happened to this \$1,000,000 in loan proceeds that  
3 were paid to the defendant?

4 A. These loan proceeds were also deposited into the  
5 defendant's Prosperity bank account ending in 7569.

6 Q. And did you determine that based on your review on  
7 records you received from Prosperity Bank?

8 A. That is correct.

9 Q. And is it shown -- is that deposit shown on Government's  
10 Exhibit 31, which is your flow chart?

11 A. Yes, sir.

12 Q. And is that Check 7247?

13 A. That is correct, yes.

14 Q. Now, is this the same Prosperity bank account --

15 **MR. FRAUSTO:** If we could just highlight that  
16 bottom account, Mr. Haag.

17 Q. **(By Mr. Frausto)** Is this the same Prosperity account  
18 ending in 7569 that you testified about earlier when we were  
19 talking about Tranche 1?

20 A. Yes, sir.

21 Q. Again, what type of account is this?

22 A. This is a consumer account.

23 Q. And whose consumer account?

24 A. The defendant's.

25 Q. And who was the sole account holder?

1 A. The defendant.

2 Q. Who was the only authorized signer?

3 A. The defendant.

4 Q. Now, at the time of the deposit, were there already  
5 funds from other sources present in the Prosperity bank  
6 account ending in 7569?

7 A. Yes. At the time that \$1,000,000 check was deposited,  
8 there was already a little over \$400,000 present in that  
9 account.

10 Q. Now, you testified earlier that the defendant already  
11 put 766,000, but at the time the \$1,000,000 was placed in  
12 there, there was only 400,000?

13 A. Correct.

14 Q. What, if anything, was significant to you about the  
15 \$400,000 balance at the time of the \$1,000,000 deposit?

16 A. Since the balance was \$400,000 and the 766,000 in loan  
17 proceeds had previously been deposited into this account, I  
18 concluded from that that at this point in time, no matter  
19 what tracing method I would have used, float or otherwise, I  
20 would have come -- come to the same conclusion that some of  
21 the working capital loan proceeds had been spent or withdrawn  
22 from this account.

23 Q. Now, since the loan proceeds were commingled with money  
24 from other sources, the \$1,000,000 coming in with 400,000,  
25 how did you trace the loan proceeds from there?

1 A. Here, I used the float method again.

2 Q. And, again, can you tell the jury what the float method  
3 is.

4 A. Yes. Once again, the float method assumes that the  
5 funds that you're interested in float to the top of the  
6 account, and those are the ones that get withdrawn first  
7 before any funds that were there before and before any funds  
8 that get deposited afterwards.

9 Q. And why did you use the float method of tracing here?

10 A. Same reason as before. The float method is the most  
11 straightforward tracing method that I'm aware of.

12 Q. And when you used that tracing method, what did it show?

13 A. In this case, it showed that the entire \$1,000,000 in  
14 working capital loan proceeds were spent or withdrawn from  
15 this account over the following nine-week period from  
16 March 2nd, 2018 to May the 4th, 2018.

17 Q. And, based on your review of the Prosperity Bank  
18 records, how did the defendant spend the \$1,000,000 in loan  
19 proceeds?

20 A. These funds were spent on personal expenses, personal  
21 investments, payment to family members, and political  
22 contributions.

23 Q. Now, let me turn your attention to Government's  
24 Exhibit 30. And, Investigator Whitworth, what is  
25 Government's Exhibit 30?

1 A. These are records -- these are records we obtained from  
2 Prosperity Bank, and these are copies of the checks that were  
3 written from the defendant's personal account ending in 7569  
4 from February 23rd of '18 through May 1st of 2018.

5 Q. Now, let's first turn to Page 3, the check at the top.  
6 What is that?

7 A. This is a check written from the defendant's personal  
8 account at Prosperity on March the 3rd, 2018.

9 Q. And who is the check made payable to?

10 A. The defendant's wife, Annette Reagor.

11 Q. And in what amount?

12 A. \$13,200.

13 Q. And what's the memo line?

14 A. It says A, R, R, R.

15 Q. And, again, based on your review of the bank records,  
16 what did that mean to you?

17 A. I believe those are the first initials for his wife and  
18 three adult children.

19 MR. FRAUSTO: Now, let's go to Page 4, the fifth  
20 check down, Mr. Haag, the very bottom, the very bottom.

21 Q. (By Mr. Frausto) Investigate Whitworth, what is this?

22 A. This is an account written on -- from the defendant's --  
23 excuse me. This is a check written from the defendant's  
24 personal account at Prosperity on March the 19th, 2018.

25 Q. And who was this check made payable to?

1 A. Eagle Strategies.

2 Q. And in what amount?

3 A. \$100,000.

4 Q. And what was the memo line?

5 A. It says, open account invest.

6 Q. And, based on your investigation, was this a personal  
7 investment by the defendant?

8 A. Yes, sir.

9 Q. Now, what did you learn during your investigation about  
10 the defendant's mansion in Lubbock, Texas?

11 A. It was located on 19th Street, and the defendant was  
12 spending money renovating, remodeling it around this time.

13 Q. And you said "around this time." Based on your  
14 investigation, was the defendant spending a lot of money on  
15 this mansion on 19th Street at the time the loan proceeds  
16 were coming in?

17 A. That is correct.

18 MR. FRAUSTO: Now, if we could go back to Page 1,  
19 Mr. Haag, second check.

20 Q. (By Mr. Frausto) Investigator Whitworth, what is this?

21 A. This is a check written from the defendant's personal  
22 account at Prosperity on February the 26th, 2018.

23 Q. And who is the check made payable to?

24 A. Salyer Homes.

25 Q. And what is Salyer Homes?

1 A. They're a custom home builder in Lubbock.

2 Q. And what is the amount?

3 A. \$207,083.45.

4 Q. And what does the memo line say?

5 A. It says, draw 14.

6 Q. And for people like me who didn't know what that meant,  
7 what does that mean?

8 A. Home builders usually get paid in draws, which is just  
9 installments basically.

10 Q. So this was the 14th draw for Salyer Homes?

11 A. According to that memo line, yes, sir.

12 **MR. FRAUSTO:** Now, if we could go to Page 5, the  
13 fourth check down. No, back, back, Mr. Haag. Right here  
14 (indicating). Let's blow this one up.

15 Q. **(By Mr. Frausto)** Investigator Whitworth, what is this?

16 A. This is a check written from the defendant's personal  
17 account at Prosperity on March 26th, 2018.

18 Q. And who's the check made payable to?

19 A. Magical Gardens.

20 Q. And what is Magical Gardens?

21 A. It's a landscaping company in Lubbock.

22 Q. And what was the amount written for this check?

23 A. \$7,000 even.

24 Q. And what did the memo line say?

25 A. Landscaping 19th.



1                   **MR. FRAUSTO:** Now, if we could go to Page 6, Mr.  
2 Haag, third check down from the top.

3       **Q. (By Mr. Frausto)** And, Investigator Whitworth, what is  
4 this?

5       **A.** This is a check written from the defendant's personal  
6 account at Prosperity on April 3rd, 2018.

7       **Q.** And who is the check made payable to?

8       **A.** The defendant's wife, Annette Reagor.

9       **Q.** And what was the amount?

10      **A.** 200,000 even.

11      **Q.** And what did the memo line say?

12      **A.** It says, for house stuff.

13      **Q.** Now, based on your analysis and review of all the bank  
14 records, are those examples of some of the checks that the  
15 defendant wrote out after he deposited the \$1,000,000 in loan  
16 proceeds into his personal bank account?

17      **A.** Yes, sir.

18      **Q.** Now, did the FBI ultimately seize any funds from the  
19 defendant's personal bank account that we've been talking  
20 about at Prosperity Bank?

21      **A.** Yes.

22      **Q.** And how much was seized from that account?

23      **A.** \$950,951.18.

24      **Q.** And when did the FBI seize these funds from the  
25 defendant's personal bank account?

1 A. November 2nd, 2018.

2 Q. Now, let's go to Government's Exhibit 32. And,  
3 Investigator Whitworth, what is Government's Exhibit 32?

4 A. This is a graph that I created that shows two sets of  
5 data. One is the balance in the defendant's personal account  
6 at Prosperity, and the other is the total amount of working  
7 capital loan proceeds that had been deposited into the  
8 account.

9 Q. Now, again, this is only entered for demonstrative  
10 purposes only. But did you use the defendant's bank records  
11 from his personal account at Prosperity Bank to create this  
12 graph?

13 A. Yes.

14 Q. Now, what is on the axis -- on each axis of the graph?  
15 So let's start with the Y or the vertical axis. What is  
16 that?

17 A. So on the vertical axis or the Y axis, that's simply  
18 dollars.

19 Q. So it starts with zero and goes up to 3.5 million?

20 A. Yes.

21 Q. Now, let's talk about the X axis, or what's horizontal.  
22 What is relayed on the X axis?

23 A. That is time. So it begins on January 1st, 2017, and it  
24 goes all the way to January 1st, 2019.

25 Q. Now, Investigator Whitworth, let's talk about, what does

1 the blue line show, this squiggly blue line?

2 A. So the blue line is the balance in the defendant's  
3 personal account at Prosperity.

4 Q. And does this blue line show when the working capital  
5 loan proceeds from each tranche were deposited into the  
6 defendant's personal bank account?

7 A. Yes. You can see little bumps. The first one is at, in  
8 July of 2017 when he deposited the 766,000. There's a bump  
9 there.

10 And then the next one is a little harder to see because  
11 of the orange line.

12 **MR. FRAUSTO:** Go ahead and zoom in right here  
13 (indicating), Mr. Haag.

14 A. So this one's a little harder to see because the orange  
15 line overlaps the blue line, but there's also a bump here in  
16 February of '18 when he deposited the \$1,000,000 check.

17 Q. **(By Mr. Frausto)** And, Investigator Whitworth, is it  
18 right here (indicating), the second one?

19 A. Yes, sir.

20 Q. And the first \$766,000 you were talking about earlier,  
21 this is the bump right here (indicating)?

22 A. Correct.

23 Q. Now, let's talk about the orange line. What does this  
24 orange line represent?

25 A. So the orange line is the amount of loan proceeds that

1 were deposited into this account. So for the first  
2 six months of 2017, it's at zero because the working capital  
3 loan had not been advanced yet.

4 But then you have the \$766,000 check being deposited in  
5 the middle of July, so the orange line bumps up to 766, and  
6 it remains there until late February, early March 2018 when  
7 he deposits the \$1,000,000 check, and then that line jumps up  
8 to 1.76 million because it is the combined total of the two  
9 checks together.

10 Q. What did you ultimately learn or discover from comparing  
11 the two lines on this graph?

12 A. When he first deposited the first check of 766,000, for  
13 a few months his account balance exceeded that amount. But  
14 then, in September 2017, and, from that point forward, by and  
15 large, the account balance remained below the amount of  
16 working capital loan proceeds that were -- that had been  
17 deposited into that account.

18 Q. And does this graph show where the FBI seized the 900  
19 some-odd thousand?

20 A. Yes. It's kind of hard to see, but there is a little  
21 gray dot over to the right end of the blue line. That  
22 represents the seizure.

23 Q. So, after your review of all the bank records and  
24 inputting all the data to make this graph, what, if anything,  
25 did this graph tell you about the tracing method that you

1 used? Whether it was the float method or any other method,  
2 what did it tell you?

3 A. Once again, it told me that, regardless of what tracing  
4 method I would have used, I still would have come to the same  
5 conclusion that some of the working capital loan proceeds  
6 that had been deposited into this account were removed from  
7 this account, and it's apparent by, especially at the end of  
8 the data where there was only \$950,000 available for seizure,  
9 and, at that time, 1.76 million in working capital loan  
10 proceeds had been deposited into it.

11 Q. Last question, Mr. -- Investigator Whitworth. Now, you  
12 dove and reviewed all the bank records involving this  
13 Prosperity bank account, which is the defendant's personal  
14 account.

15 Did you see any evidence of the defendant transferring  
16 the 1.76 million in loan proceeds that he deposited into his  
17 personal account go back into any RDAG entity?

18 A. No, not the 1.76 million. I looked at the -- I looked  
19 closely at the records from the time he first deposited the  
20 working capital loan proceeds into this account up through  
21 the end of our data there in October of '18.

22 And, during that entire time frame, I only saw a single  
23 check going from his personal account back to an RDAG entity,  
24 and it was somewhere around \$2,800.

25 **MR. FRAUSTO:** Your Honor, I'll go ahead and pass

1 the witness.

2 THE COURT: Mr. Payne, you may approach for  
3 cross-examination. I'll just admonish you to identify  
4 exhibits by number for record purposes, and you may begin.

5 CROSS-EXAMINATION

6 BY MR. PAYNE:

7 Q. Special Agent, you spent a lot of time investigating and  
8 going through documents and e-mails on this case; would that  
9 be a fair statement?

10 A. Yes, sir.

11 Q. And you have a background in mechanical engineering.  
12 And I'm assuming with twenty-five years plus in this business  
13 you're very detailed; would that be a correct statement?

14 A. I try to be.

15 Q. All right. So it's uncontroverted — and I guess in a  
16 nutshell everything that the prosecutor just went over with  
17 — that he took these funds, and he used them for personal  
18 expenses, correct?

19 A. Yes, sir.

20 Q. I mean, all the tracing, all of the documents,  
21 everything that they had up, he took the money, it went into  
22 his personal account, and then he used it for personal funds,  
23 correct?

24 A. That is correct.

25 Q. You're not suggesting, are you, to the jury that using

1 your personal funds for a remodel of a house is illegal, are  
2 you?

3 A. It depends on where the personal funds came from.

4 Q. Well, let's just stick with personal funds. If it's  
5 your personal bank account, there's nothing wrong with you  
6 using your personal funds for a swimming pool, correct?

7 A. There is if they were obtained by fraud, yes, sir.

8 Q. I know, but, again, I'm saying if they're your personal  
9 funds for purposes of cross-examination, and you're using  
10 your personal funds, you're not suggesting that using your  
11 personal legal funds for a home remodel is illegal, are you?

12 A. Not -- yes, thank you for adding the word "legal,  
13 personal legal funds." Absolutely, there is nothing wrong  
14 with that.

15 Q. And there's nothing wrong with making investments; would  
16 you agree?

17 A. Not with legally-obtained funds, correct.

18 Q. Okay. For these next few questions, let's just assume  
19 that it's legal funds. Okay?

20 A. Yes, sir.

21 Q. All right. Thank you. You're not telling this jury and  
22 suggesting that making political contributions is illegal,  
23 are you?

24 A. No, sir.

25 Q. We saw multiple checks of money going to Mr. Reagor's

1 spouse. That's not illegal, is it?

2 A. No, sir.

3 Q. And making check payments to your children for maybe  
4 gift purposes, that's not illegal if it's with legal funds;  
5 would you agree?

6 A. I would agree.

7 Q. So you're not suggesting that someone that takes legal  
8 funds and has a legal business and is doing very well and  
9 following the American dream and growing a business and  
10 making money, that making money is illegal, are you?

11 A. No, sir.

12 Q. So when we look at this bank account, it was Bart  
13 Reagor, POD to Annette Reagor, agree?

14 A. Yes, sir.

15 Q. What does POD mean?

16 A. It means pay on death.

17 Q. So would you agree with me that a lot of times bank  
18 accounts are set up, especially for estate-planning purposes,  
19 that, when someone dies, a death certificate is presented,  
20 and it's payable on death to the person named, correct?

21 A. Yes. It prevents you from having to go through probate,  
22 is my understanding.

23 Q. Much like a beneficiary of a 401(k) or some type of  
24 other beneficiary, agreed?

25 A. I believe so.



1 Q. And so all this means when we say POD, that the name is  
2 his -- in his name, the bank account is in Mr. Reagor's name,  
3 his social security is in his name, if he died, then it will  
4 be payable on death to his wife, correct?

5 A. Correct.

6 Q. Very common for people to name PODs in bank accounts;  
7 would you agree?

8 A. I've seen it many times.

9 Q. Also, let's talk just a little bit -- besides the bank  
10 account, let's talk about LLCs. Are you familiar with the  
11 difference between an LLC and a corporation?

12 A. In a general sense. I'm not an attorney, not a  
13 specialist in corporate law, but some -- some differences,  
14 yes.

15 Q. Well, you testified to the prosecutor that all of these  
16 funds came from a business account and then went into a  
17 personal account, correct?

18 A. That is correct.

19 Q. If you're a member of an LLC, and there's a two-member  
20 LLC, do you understand that you take money from distributions  
21 or allocations?

22 A. I've never heard the word "allocation," but I've heard  
23 the word distribution.

24 Q. All right. And so when a business entity is set up, if  
25 it goes into your LLC and you're a member, that's your money;

1 would you agree with that?

2 A. After -- after the --

3 **MR. FRAUSTO:** Your Honor, I'm going to object,  
4 outside the scope of the direct.

5 **THE COURT:** I'll allow a few more questions. This  
6 witness isn't designated as an expert in corporate law, and  
7 he can speak to his experience as an investigator in  
8 reviewing accounts, but if he repeats again that he doesn't  
9 profess a knowledge of the difference between LLCs and  
10 corporations and how those are legally organized and how  
11 disbursements work, we'll just move on to the next line of  
12 questions.

13 So, sustained, but I'll allow one or two follow-up  
14 questions, but the witness is not designated as an expert for  
15 purposes of these corporate formations and corporate law.

16 **MR. PAYNE:** Thank you, Your Honor.

17 Q. **(By Mr. Payne)** You testified -- your testimony was that  
18 the funds went from a business account into a personal  
19 account, and that all of these checks that were just shown  
20 for personal expenses came from a personal account, correct?

21 A. That is correct.

22 Q. Do you understand that those checks could have been  
23 written on an LLC account, and it would have been out as a  
24 distribution for tax purposes the same as if it had gone into  
25 a personal account? Do you understand that?

1 A. That, I do not know.

2 THE COURT: And, with that, I'll sustain the  
3 Government's objection. The witness is not an expert on  
4 corporate law, and, at this point, no further questions on  
5 that line.

6 MR. PAYNE: Well, and I understand, Your Honor,  
7 he's not an expert, and I don't think my questions were to  
8 his expertise other than the fact that he testified that  
9 those funds went from a business account to a personal  
10 account.

11 THE COURT: Okay. And you may continue with lines  
12 of questions, but let's remember the designations in this  
13 case, who is and is not an expert, and the limits of direct  
14 [sic] examination. So please proceed.

15 MR. PAYNE: Thank you, Your Honor.

16 Q. (By Mr. Payne) In other words, if it's your money, and  
17 it's your legal money, to nutshell all of this, you can do  
18 whatever you want in American with your money; isn't that  
19 correct? And I prefaced that with legal.

20 A. Legal, yes.

21 Q. And it's not the government's or the FBI's business to  
22 tell someone what to do with their personal legal money;  
23 would you agree?

24 A. Well, you can't go buy drugs with it, but, yeah, if  
25 you're going to use it legally, yes. If it was legally

1 obtained and you use it legally, yes.

2 Q. Did we see any checks written for illegal drugs?

3 A. No.

4 Q. Did we see any impropriety that he did anything with  
5 these funds if we consider that those are -- if we take the  
6 assumption that they're legal funds?

7 Did you see any checks written to any entities, any  
8 organizations for illegal purposes?

9 A. No, sir.

10 Q. So you're not suggesting that a monthly allowance to his  
11 wife would be illegal?

12 A. Not if the funds were obtained legally.

13 Q. So let's talk about the funds being legal. You  
14 testified, and you said that some of the working capital loan  
15 proceeds were used no matter what method you would have used  
16 in the tracing. That was your testimony?

17 A. Correct.

18 Q. Can you give me a definition of working capital.

19 A. The accounting definition, my understanding, is current  
20 assets minus current liabilities.

21 Q. Okay. Were you involved in any way with the contract  
22 negotiations between RDAG and IBC?

23 A. Of course not.

24 Q. Have you ever been involved in your twenty-five years in  
25 breach-of-contract type cases involving bank entities and

1 private businesses?

2 **MR. FRAUSTO:** Your Honor, I'm going to object to  
3 this line of questioning. He testified about the tracing of  
4 funds, nothing about the contract.

5 **THE COURT:** Okay. Again, for the same reason, the  
6 objection is sustained. The witness did testify to accounts,  
7 and you are free to go through accounts, who's designated  
8 POD, any of those lines of questions, but this witness isn't  
9 designated to speak to the contract.

10 We have experts that the jury will hear from on  
11 those points, but, right now, we're talking about accounts  
12 and tracing. So orient your questions to respond to direct.

13 **MR. PAYNE:** I understand, Your Honor, but his  
14 testimony was specifically that some of the working capital,  
15 and he specifically referenced the contract and working  
16 capital.

17 **THE COURT:** Okay. And he did that by identifying  
18 account numbers and accounts, and I'll allow you to go slide  
19 by slide, exhibit by exhibit on that, but he did not testify  
20 to the legal definition of working capital.

21 So I'll sustain the objection. Please reorient  
22 your question. I'll give you wide latitude into anything  
23 that was educed during direct.

24 Q. **(By Mr. Payne)** As far as the Government's exhibits, we  
25 saw money paid to a pool company, to the -- Mr. Reagor's wife

1 and to his children.

2 Did you also mention that he had charitable donations  
3 that were paid out of that? Did we see any of those slides?

4 A. No, sir.

5 Q. Did we see any of the political contribution slide --  
6 checks written up here that they showed as slides?

7 A. No, sir.

8 Q. So the only thing we saw on the slides that were  
9 presented were ones that showed to home building and to pool  
10 and to his family, correct?

11 A. Correct.

12 Q. The documents -- and you mentioned earlier in your  
13 testimony that there were many documents that you reviewed.  
14 Would you say thousands of documents that you went over --

15 A. Yes.

16 Q. -- in this investigation?

17 The documents that you received, those were under  
18 subpoena, and those are provided by Mr. Reagor; is that  
19 correct?

20 A. Which documents are you referring to?

21 Q. The documents, the bank records, all the documents that  
22 you received, all the audio, and all of that was received by  
23 subpoena, correct?

24 A. Received by subpoena from banks, yes.

25 Q. And did you receive much of that documentation from the

1 attorney for Mr. Reagor?

2 A. No.

3 Q. None? Your testimony is you didn't receive any  
4 documents that you reviewed from a subpoena to Mr. Reagor  
5 that was provided by his attorney?

6 A. We received some recordings of videos from his previous  
7 attorney.

8 And, yes, we did subpoena D and R Acquisitions for,  
9 like, journal entries, but they did not give us what we asked  
10 them for, but they were documents, yes.

11 Q. So almost seven terabytes worth of documentation that  
12 you received under subpoena from Mr. Reagor's attorney; is  
13 that correct?

14 A. Those were the videos, yes.

15 Q. So seven terabytes is a lot of information; would you  
16 agree?

17 A. It is.

18 Q. And how many thousands of e-mails did you review?

19 A. I don't recall how many. It was thousands. I don't  
20 remember how many thousand.

21 Q. I want to reference the Indictment. Your graph — I  
22 believe it was Exhibit 32 — showed where you took a  
23 forfeiture from the proceeds of Mr. Reagor's personal  
24 account, correct?

25 A. Correct.

1 Q. Would you agree with me that, if the jury does not find  
2 Mr. Reagor guilty, then the Government doesn't get those  
3 proceeds?

4 MR. HAAG: Objection, Your Honor. Calls for a  
5 legal conclusion.

6 THE COURT: Sustained. I'll instruct the jury to  
7 disregard. The witness is also instructed to not answer.

8 If you can reformulate the question so that it  
9 doesn't call for a legal conclusion, I will allow it.

10 MR. PAYNE: Well, could I just read directly from  
11 the Indictment, Your Honor, that's admitted --

12 THE COURT: Yes.

13 MR. PAYNE: -- in front of the jury.

14 THE COURT: You may read from the Indictment.

15 Q. (By Mr. Payne) Would you agree that it says: Upon  
16 conviction for any of the offenses alleged in Counts One,  
17 Two, or Three of this Indictment, Bart Wade Reagor,  
18 defendant, shall forfeit to the United States of America,  
19 pursuant to Title 18 U.S.C. Section 982, any property, real  
20 or personal, which constitutes or is derived from proceeds  
21 traceable to the respective offense, including, but not  
22 limited to, and then it mentions \$950,951.18?

23 And that's what you took as the forfeiture, correct?

24 A. Yes, sir.

25 Q. And, again, nutshelling your testimony with the



1 prosecutor, everything that you showed this jury, every one  
2 of those checks, your testimony is those were illegal  
3 funds --

4 A. So that for --

5 Q. -- is that correct?

6 A. That last part again.

7 Q. Your testimony is all of those checks that he wrote was  
8 proceeds that were from illegal funds?

9 A. Correct.

10 Q. And if those were not illegal funds, then it doesn't  
11 matter what he did with his money, correct?

12 A. Correct.

13 MR. PAYNE: Can I have one moment, Your Honor?

14 THE COURT: Yes, please. And I'll instruct the  
15 courtroom deputy to disable the microphones if you need to  
16 have attorney/client conversations.

17 (Defense Attorneys' sotto-voce conference.)

18 MR. PAYNE: Judge, I'll pass the witness.

19 THE COURT: Okay. At this point, redirect, Mr.  
20 Frausto?

21 And, again, I'll admonish you as well to limit your  
22 redirect to anything that was elicited during  
23 cross-examination.

24 MR. FRAUSTO: Thank you, Your Honor. Let's zoom in  
25 at the bottom, Mr. Haag, of Government's Exhibit 31.

**REDIRECT EXAMINATION**

**BY MR. FRAUSTO:**

Q. Now, Investigator Whitworth, the Defense asked that -- stated that you didn't go over payments to charity or political contributions, but that was included as some of the expenses on your summary flow chart in Government's Exhibit 31?

A. Correct.

Q. And is the reason why the other checks were shown was because those were the larger amounts that were paid out of the defendant's personal account?

A. Correct.

Q. Now, the Defense talked about discovery or items, seven terabytes of discovery you received from the Defense. That was pursuant to a subpoena?

A. Correct.

Q. And that was only the management meetings or Skype videos?

A. That was the bulk of the storage, what took up the storage space, yes. There were some other miscellaneous items on there, but yes.

Q. But you received all the bank records, including from Prosperity Bank, FirstCapital Bank of Texas, and all the other bank records you talked about in conducting your tracing analysis, you received those records from the banks

1 themselves?

2 MR. PAYNE: Object to leading, Your Honor.

3 MR. FRAUSTO: I'll rephrase, Your Honor.

4 THE COURT: Please rephrase. Yeah. Sustained.

5 And I'll allow counsel to rephrase.

6 Q. (By Mr. Frausto) The Prosperity Bank records, where did  
7 you receive those from?

8 A. From Prosperity Bank.

9 Q. And did you use those bank records to conduct your  
10 tracing analysis?

11 A. Yes, sir.

12 Q. Did you use any of these Skype videos you received from  
13 the defendant to do your tracing analysis?

14 A. No, sir.

15 Q. Now, I want to clarify one thing. There is a forfeiture  
16 notice in the Indictment, but that's -- is it your  
17 understanding that that's only the forfeiture of the  
18 defendant's interest; that money does not go to the  
19 government?

20 A. I'm not sure I understand the question.

21 Q. Okay. When you forfeit that, that money doesn't come  
22 straight to the United States; it ultimately gets delved out  
23 to other people.

24 MR. PAYNE: Judge, I'm going to object. First of  
25 all, that's leading.

1           **THE COURT:** Yes, sustained on leading, but, also,  
2     at this point, the Court will instruct the jury on  
3     punishment. This will be reflected in the jury charge as  
4     well.

5           I know we're tracing funds, and we're seeing where  
6     proceeds go, and I understand the line of questioning, but on  
7     the law, this jury is not to consider punishment when  
8     deciding guilt or innocence during their verdict  
9     deliberations.

10          So I am still coordinating with counsel on the form  
11     of the jury charge, but it will contain in substance  
12     something like this, and this is the Fifth Circuit Pattern on  
13     punishment. If a defendant is found guilty, it will be my  
14     duty to decide what the punishment will be. You should not  
15     be concerned with punishment in any way. It should not enter  
16     your consideration or discussion.

17          And although there is a forfeiture count in this  
18     case, how that is meted out through administrative forfeiture  
19     or a judgment from this Court, that will be this Court's  
20     responsibility to decide.

21          So there is a forfeiture count, and I understand  
22     why it was referenced periodically, but I want you to  
23     understand, as far as the law and as far as the charge that  
24     you will receive, it is this Court's responsibility to  
25     determine judgment on forfeiture, whether administrative or

1 through a ruling from this Court in the form of a judgment.

2 You may proceed with that instruction.

3 **MR. FRAUSTO:** No further questions, Your Honor.

4 **MR. HAAG:** Your Honor, if I may, I would like to  
5 just clarify one thing, because I do believe there's a  
6 misconception about forfeiture. Forfeiture is completely --

7 **MR. PAYNE:** Judge, this is a speaking objection,  
8 and I do --

9 **THE COURT:** Okay. We can -- we can briefly excuse  
10 the jury.

11 **MR. HAAG:** Your Honor, if I may, it's not  
12 necessary. It's not an objection. I just wanted to clear up  
13 any misunderstandings, because I think --

14 **THE COURT:** Okay. Let's do this at the bench  
15 though before it's presented before the jury.

16 I've instructed them on the pattern that they're  
17 likely to receive on punishment. I want to make certain that  
18 they --

19 **(The following took place at the bench and outside the**  
20 **hearing of open court.)**

21 **THE COURT:** Okay. So yesterday, yesterday at the  
22 close of business, the Court spent some time entering  
23 findings on disclosure and discovery in this case, because  
24 there were initial allegations of prosecutorial misconduct.  
25 Those have since been withdrawn. I confirmed on the record

1 with counsel for the Government and Defendant present that  
2 there are no allegations of misconduct in that process.

3 Defendant stated in written form through the NDTX  
4 portal that's now withdrawn. The Court has also received an  
5 oral confirmation from counsel that that allegation is now  
6 withdrawn.

7 The reason for that is, I don't want a lot of  
8 confusing testimony about the discovery in this case because  
9 it was so voluminous.

10 MR. HAAG: I agree, Your Honor. And I --

11 THE COURT: And I understand in any tracing case,  
12 you're going to go into proceeds. There are going to be  
13 complicated charts about where funds did and didn't go.

14 I'm fine to allow latitude on accounts identified  
15 by account numbers, but whether certain persons are made  
16 whole through forfeiture, whether those proceeds go back to  
17 victims, this Court will decide all of those questions  
18 through the forfeiture process.

19 In fact --

20 MR. HAAG: I know.

21 THE COURT: -- as the AUSAs at this table know,  
22 there's an asset forfeiture money laundering section that  
23 takes care of this because it's so irrelevant.

24 MR. FRAUSTO: That's what we want clarified --

25 MR. PAYNE: But that's clearly --

1           **MR. FRAUSTO:** -- so the jury doesn't think that  
2 money is just going straight to us. That's what we're trying  
3 to clarify. As you say, it's ultimately up to you.

4           **MR. HAAG:** Okay. Here's my proposal, Your Honor.  
5 I think this --

6           **THE COURT:** Let me let Mr. Payne respond to the  
7 Court, and then I'll let you reply.

8           **MR. PAYNE:** And, Judge, that's why I just read from  
9 the Indictment. If there's a speaking objection as to  
10 clarify, they can do that through closing arguments, or they  
11 can somehow do it through the Court's instruction, but it  
12 was -- I read directly from the Indictment. That was it.

13           **THE COURT:** And I permitted that.

14           **MR. PAYNE:** Right.

15           **THE COURT:** I permitted that.

16           **MR. PAYNE:** So I don't understand why they're  
17 trying to clarify a closing argument through a speaking  
18 objection that should be done through the Court and through  
19 closing argument.

20           **THE COURT:** Because on the elements, it's not  
21 relevant to how people are or are not made whole, whether  
22 it's victims, whether it's the government, whether it's the  
23 IRS.

24           **MR. PAYNE:** Correct.

25           **THE COURT:** That procedure will be handled by this

1 Court --

2 MR. PAYNE: Correct, and that's the instruction.

3 THE COURT: -- should we have a verdict.

4 MR. HAAG: And that's all I ask, Your Honor. Just  
5 to clear up any misconception, just say to this jury --

6 THE COURT: I can say it.

7 MR. PAYNE: Yes.

8 MR. HAAG: Yes. Just say -- from the Court, say, I  
9 want to instruct the jury that the disbursement or the final  
10 disposition of the \$950,000 seized is something that will be  
11 adjudicated by this Court. That money does not go to the  
12 United States Government.

13 MR. PAYNE: But I don't agree with that.

14 THE COURT: We don't know.

15 MR. PAYNE: Right.

16 MR. HAAG: Well, it doesn't.

17 THE COURT: Should there be IRS tax liens,  
18 liabilities, we don't --

19 MR. PAYNE: We don't know. You can't say that.

20 MR. HAAG: Yeah, I can, because it only forfeits  
21 your client's interest, that's it. And in 32 point  
22 whatever, there's an ancillary proceeding where everybody  
23 else who has a claim to that money files --

24 MR. PAYNE: Right, but you --

25 MR. HAAG: -- a claim to it.



1           **MR. PAYNE:** -- can't say the Government doesn't get  
2 the money. You can't say that.

3           **MR. HAAG:** Well, I'm going to tell you because  
4 we're going to put it in an interpleader and let everybody  
5 fight it out.

6           **MR. PAYNE:** I know, but that's only if there's a  
7 conviction.

8           **MR. HAAG:** Well, yes.

9           **MR. PAYNE:** Right. And that's straight from the  
10 Indictment.

11           **THE COURT:** Listen, listen. Don't --

12           **MR. HAAG:** We won't --

13           **THE COURT:** -- crosstalk --

14           **MR. HAAG:** -- crosstalk.

15           **THE COURT:** -- for the court reporter.

16           **COURT REPORTER:** Right.

17           **THE COURT:** I will give the instruction.

18           **MR. PAYNE:** That's all I'm asking.

19           **THE COURT:** And Defendant's objection is sustained  
20 as to a speaking objection that would take the form of  
21 argument. If it comes from the bench --

22                   Now, could you reference the forfeiture provision?  
23 You may not know this, but every AUSA just dumps this work on  
24 the AFML section.

25           **MR. HAAG:** If I might see that, Your Honor.

1           **THE COURT:** And most of us are not experts.

2           **MR. PAYNE:** But I think this is a closing argument  
3 issue and I think it's an instruction issue, not a speaking  
4 objection issue.

5           **THE COURT:** Okay. Well, we can take that up at the  
6 jury charge or prior -- prior to closing. But we've done --  
7 and the Court does off the record reflect that counsel --

8           **MR. PAYNE:** You kept me from everything else I  
9 wanted to go through.

10          **THE COURT:** So --

11          **MR. HAAG:** Your Honor, I would just say this, how  
12 about this --

13          **THE COURT:** Counsel have worked very hard to keep  
14 parallel proceedings out of this case so that nobody is  
15 convicted or nobody is deemed not guilty because of what  
16 happened in bankruptcy, what happened in a civil case or a  
17 civil tort action.

18               We've all worked together very hard, and that's the  
19 reason why I think a separate instruction is due here,  
20 because I don't want people doing research about bankruptcy  
21 proceedings, civil actions that may be in play.

22          **MR. FRAUSTO:** Or what happens to forfeiture.

23          **THE COURT:** Or what happens --

24          **MR. PAYNE:** That's why I merely read from the  
25 Indictment.

1 MR. HAAG: Yes, Your Honor.

2 THE COURT: And I don't find that you did anything  
3 inappropriate, and I allowed the question for that reason.

4 MR. PAYNE: Yes, sir.

5 THE COURT: Because it was tailored to the law of  
6 the case and then also the Indictment, so --

7 MR. PAYNE: I don't have any other questions of  
8 John.

9 THE COURT: Criminal forfeiture. Where am I  
10 looking in --

11 MR. HAAG: I think --

12 THE COURT: -- Rule 32.2?

13 MR. HAAG: -- if you just say, I instruct the jury  
14 that forfeiture will be handled under Rule 32.2 of the rules  
15 and --

16 THE COURT: And it is a separate proceeding.

17 MR. HAAG: Yes.

18 THE COURT: And you should not infer for or against  
19 the defendant for those reasons.

20 MR. HAAG: Exactly.

21 MR. FRAUSTO: Or for or against the government.

22 THE COURT: Okay.

23 MR. PAYNE: Well, maybe.

24 (The following took place in the hearing of open court.)

25 THE COURT: Okay. Do you like the white-noise

1 machine?

2 (Laughter.)

3 THE COURT: So I have five children. I'm used to  
4 that sound in various bedrooms throughout the house.

5 Okay. So I've reached accord with counsel so that  
6 I can properly instruct you on how the law works in this  
7 area.

8 So pursuant to Rule 32.2, which designate the  
9 post-conviction procedures for criminal forfeiture should  
10 this case go that far without making any commentary on how  
11 you should decide guilt or innocence, but should there be a  
12 conviction in the case, there will be a separate forfeiture  
13 procedure and protocol that this Court follows, that this  
14 Court decides.

15 So I am governed by that Rule 32.2 of Criminal  
16 Procedure. There are a series of notices that must be issued  
17 and posted as those funds are identified and subject to  
18 forfeiture.

19 This Court will decide those questions, and you  
20 should not decide this case for or against the defendant  
21 based on forfeitures and where funds go or where they may  
22 end. You should not decide this case for or against the  
23 government for reasons of forfeiture and where those funds go  
24 and where they terminate.

25 We've also worked very diligently with counsel to

1 make sure we don't have reference to parallel civil or  
2 bankruptcy proceedings that are not relevant to the case that  
3 you will receive through the jury charge.

4 So, on that point, this Court -- using the Rules of  
5 Criminal Procedure, there are multiple forms of forfeiture.  
6 This Court will decide that question, and you should not  
7 decide this case based on forfeiture and where those funds  
8 will ultimately terminate.

9 Is that acceptable to the Government?

10 MR. HAAG: Yes, Your Honor.

11 THE COURT: Is that acceptable to the Defense?

12 MR. PAYNE: Yes, Your Honor.

13 THE COURT: Okay. And, at this point, may this  
14 witness be excused or are we on --

15 MR. PAYNE: I have no further questions, Your  
16 Honor.

17 THE COURT: Okay. Was that recross?

18 MR. PAYNE: Yes, Your Honor.

19 THE COURT: Okay. At this point --

20 MR. FRAUSTO: No.

21 THE COURT: -- now that we've gone through direct,  
22 cross, redirect and recross, at this point, may this witness  
23 be excused?

24 MR. FRAUSTO: Yes, Your Honor, subject to recall,  
25 and he's the case agent.

1           **THE COURT:** Oh, and he's the case agent, that's  
2 right. So, subject to recall and understanding that you are  
3 the case agent and you are exempt from the rule, you may  
4 return to your seat.

5           **(Witness leaves the stand.)**

6           **THE COURT:** And, again, as I've instructed the jury  
7 before, you should not infer anything from even impassioned  
8 deliberations at the bench, because the attorneys are  
9 vigorously arguing the law to the Court and then requesting a  
10 ruling from this Court.

11           So you should not infer anything from the fact that  
12 attorneys are zealously advocating for their side at this  
13 bench. I've issued multiple orders in this case that require  
14 them to approach and seek ruling if we're approaching a type  
15 of evidence or testimony that requires a legal ruling,  
16 because this is my job, to define the law and instruct it to  
17 you.

18           They are doing their jobs in approaching the bench  
19 to argue legal points so that they can get the ruling and  
20 then proceed. So you should not infer anything from these  
21 various bench conferences and even some heated argument at  
22 times. The attorneys are simply doing their job.

23           Okay. Mr. Haag, you may call your next witness.

24           **MS. BURCH:** Your Honor, the Government calls its  
25 last witness for its case-in-chief, Steve Dawson.

1           **THE COURT:** Okay. Ms. Burch, you may approach the  
2 podium. I'm admonish you to reference exhibits by number for  
3 record purposes.

4           And, Mr. Dawson, you may approach the witness  
5 chair. Please remain standing for administration of the  
6 oath. My courtroom deputy will administer the oath.

7           **(The witness was sworn by the courtroom deputy.)**

8           **THE COURT:** And, Mr. Dawson, you may take your  
9 seat. I'll request that you speak clearly and loudly into  
10 the microphone. If you need to pull it closer, you may do  
11 so.

12           And, Ms. Burch, you may proceed.

13           **MS. BURCH:** Thank you, Your Honor.

14                           **STEVEN DAWSON,**

15           having been first duly sworn, testified as follows:

16                           **DIRECT EXAMINATION**

17           **BY MS. BURCH:**

18           Q. Please state your name.

19           A. Steven Lane Dawson.

20           Q. How are you employed?

21           A. I'm the president of the Dawson Forensic Group.

22           Q. How long have you been employed in that capacity?

23           A. Ten years.

24           Q. What does the Dawson Forensic Group do?

25           A. We do forensic investigations, fraud investigations of

1 internal fraud, the type of fraud that occurs within an  
2 organization, within a company.

3 Q. What did you do before you operated the Dawson Forensic  
4 Group?

5 A. For twenty-six years, I was with the accounting firm  
6 Bolinger, Segars, Gilbert & Moss in Lubbock, Texas and  
7 serving as a CPA. For the last about fifteen years of that,  
8 I was one of the partners, and for about the last seven years  
9 of that I was managing partner.

10 Q. And you indicated you're a CPA. What is your  
11 educational background?

12 A. I have a Bachelor's in accounting from Texas Tech  
13 University, and then a certified public accountant  
14 certificate and a certified fraud examiner certificate.

15 Q. What does a -- when you say CPA, does that mean  
16 certified public accountant?

17 A. Yes.

18 Q. All right. And what does a certified public accountant  
19 do generally?

20 A. Generally, it is services that report to the public,  
21 such as financial statement audits, the preparation of income  
22 tax returns. In some cases, we do what we call client  
23 write-up or bookkeeping for clients.

24 Q. What does a certified fraud examiner do?

25 A. A certified fraud examiner has a different set of



1 skills, kind of a specialized set of skills that relates to  
2 document examination, interviews, application of forensic  
3 tracing methodologies, and we also do a lot of data analysis  
4 on the capture and analysis of hard drives, computer hard  
5 drives.

6 Q. All right. And is that all within sort of the umbrella  
7 of accounting and financial things? You're not doing  
8 forensics on fingerprints and guns; is that fair?

9 A. That's correct, we do not.

10 Q. All right. Do you have continuing education  
11 requirements to maintain those certifications?

12 A. Yes, we do.

13 Q. Do you have any professional memberships?

14 A. Yes. I'm a member of the American Institute of  
15 Certified Public Accountants, the Texas Society of Certified  
16 Public Accountants, and the Association of Certified Fraud  
17 Examiners.

18 Q. Have you lectured or presented topics on forensic  
19 accounting in the past?

20 A. Yes.

21 Q. And, in the past several years, have you been retained  
22 to review financial documents and other type records in legal  
23 proceedings?

24 A. Yes.

25 Q. In civil cases?

1 A. Yes.

2 Q. For both plaintiffs and defendants?

3 A. Yes.

4 Q. For third parties?

5 A. Yes.

6 Q. And also in criminal cases?

7 A. Yes.

8 Q. And, in fact, have you been a defense witness before in  
9 a criminal case?

10 A. Yes, I have.

11 Q. At some point were you contacted by the United States to  
12 conduct a review and analysis of the financial documents and  
13 other documents related to the Reagor-Dykes Auto Group?

14 A. Yes.

15 Q. And did you agree to conduct that review?

16 A. I did.

17 Q. Did the United States agree to pay you for the time you  
18 spent conducting that review?

19 A. Yes.

20 Q. Did the United States also agree to pay you for the time  
21 that you spend doing other things related to the case, such  
22 as traveling, listening to the testimony, testifying, things  
23 like that?

24 A. Yes.

25 Q. And is the pay that you're receiving tied in any way to

1 giving a particular opinion?

2 A. No, it's strictly by the hour.

3 Q. How much are you being paid by the hour, you or your  
4 group?

5 A. Our rates range from \$50 an hour to \$350 an hour,  
6 depending on the staff assigned to the engagement.

7 Q. All right. So maybe the person with the most expertise  
8 is getting more per hour than the person that's making  
9 copies; is that fair?

10 A. That's correct.

11 Q. All right. Is that -- are those prices or those hourly  
12 rates, is that commensurate with the fair market value of  
13 your services?

14 A. Yes.

15 Q. About how many hours have you spent working on this,  
16 this case so far?

17 A. Approximately 560 hours.

18 Q. All right. And when I say "this case," I want to be  
19 clear. That's not solely limited to Mr. Reagor; that's the  
20 larger Reagor-Dykes Auto Group investigation?

21 A. Correct.

22 Q. All right. Now, what has that time been spent doing?

23 A. It's document examination, which includes bank records.  
24 It includes looking at transcripts of the interviews. It  
25 includes data analysis on e-mails.

1 Q. And, as of today, approximately how much money has the  
2 United States paid you for your services?

3 A. About \$87,000.

4 Q. And I know that may seem like a large amount, but were  
5 you asked to analyze a company with multiple components?

6 A. Yes.

7 Q. Multiple locations?

8 A. Yes.

9 Q. And sales of approximately \$800,000,000?

10 A. Yes.

11 Q. Now, you referenced a few minutes ago some of the  
12 documents that you've reviewed in this case. Have there been  
13 few documents or many documents?

14 A. Many.

15 Q. And you mentioned e-mails and some other things. Have  
16 you also reviewed -- in addition to the e-mails and reports,  
17 have you also reviewed financial documents?

18 A. Yes.

19 Q. From your review, did you learn that there were several  
20 different companies operating under the general umbrella of  
21 Reagor-Dykes Auto Group?

22 A. Yes.

23 Q. Did you learn about a company known as D and R  
24 Acquisitions?

25 A. Yes.

1 Q. And was Mr. Reagor a 50-percent owner of that company?

2 A. Yes.

3 Q. Did D and R Acquisitions primarily hold the real estate  
4 assets for RDAG?

5 A. Yes.

6 Q. And, based on your review of the documents, was there a  
7 time when the Ford Motor Credit Company conducted an audit of  
8 RDAG that had a negative outcome?

9 A. Yes.

10 Q. Did that negative audit place RDAG in a weak cash  
11 position?

12 A. Yes.

13 Q. How?

14 A. By the need to make good on the negative FMCC audit,  
15 amounts that were going to have to be paid, that naturally  
16 reduces cash.

17 Q. When a company has a weak cash position, what do they  
18 need to do to stay afloat?

19 A. Get working capital.

20 Q. And how might they do that?

21 A. The owners can put more money into the company. They  
22 can cut expenses or they can borrow.

23 Q. Did you review documents related to a \$10,000,000  
24 working capital loan between RDAG or — I should be more  
25 precise — between D and R -- D and R Acquisitions and IBC?

1 A. Yes.

2 Q. Or International Bank of Commerce?

3 A. Yes.

4 Q. What was the purpose of that loan?

5 A. The loan agreement purpose stated working capital.

6 Q. And, based on your background and your experience in  
7 accounting, can you define working capital?

8 A. Yes. It's current assets minus current liabilities.

9 Q. That sounds like a mouthful to me. Can you give the  
10 jury an example of working capital in a way that might make a  
11 little more sense for a regular person like me.

12 A. Yes. From a -- from a personal standpoint, if you  
13 have -- just as an example, if you've got \$500 in your  
14 checking account, and next week you owe your electric bill  
15 for \$200, then you've got current assets, the \$500 that's in  
16 your checking account, and you've got current liabilities,  
17 the \$200 that's due next week, so the 500 minus 200 equals  
18 300, and the \$300 would be the -- the working capital.

19 Q. So, in that example, that \$300, would that be like kind  
20 of your cushion for operating your life?

21 A. Yes.

22 Q. And are current liabilities the things that you  
23 generally need to pay to keep the business going, if we're  
24 going back to the business example?

25 A. Yes.

1 Q. Would you expect working capital to go into a business  
2 account?

3 A. Yes, I would.

4 Q. Would you expect working capital to cover business  
5 expenses?

6 A. Yes.

7 Q. Can working capital pay the electric bill?

8 A. Yes.

9 Q. Water bill?

10 A. Yes.

11 Q. Pay for regular employee salaries?

12 A. Yes.

13 Q. Regular employee bonuses even?

14 A. Yes.

15 Q. Now, based on your review of the financial documents,  
16 did you see where a portion of the proceeds of each of those  
17 two \$5,000,000 disbursements that we've been talking about —  
18 I can't even say that fancy word — but those -- those two  
19 \$5,000,000 disbursements that we've been talking about in  
20 court, did you see in your review of the financial documents  
21 where a portion of those landed in Mr. Reagor's personal  
22 account?

23 A. Yes.

24 Q. And, in your capacity as an expert witness for this  
25 case, did you sit in on an interview of Mr. Reagor's CPA,

1 Chuck Darter, with attorneys for the United States?

2 A. Yes.

3 Q. And how did Mr. Reagor's CPA classify the disbursements  
4 of the IBC working capital loan proceeds to Mr. Reagor's  
5 personal account?

6 MR. COGDELL: Objection, hearsay.

7 MS. BURCH: May I respond?

8 THE COURT: Sustained. I'll allow you to respond.

9 MS. BURCH: Your Honor, this is an expert witness.  
10 He's allowed to rely on hearsay under the rules, and he was  
11 allowed to sit in on that interview and analyze what was --  
12 what was said by Mr. Reagor's CPA.

13 THE COURT: He can -- he can speak to matters in  
14 his report and what he learned through those interviews, but  
15 I will not permit recitation of actual statements. So the  
16 objection is sustained.

17 Q. (By Ms. Burch) At some point did you come to learn that  
18 Mr. Reagor's -- that those -- that portions of the loan  
19 proceeds have been classified as owner distributions?

20 A. Yes.

21 Q. What is an owner distribution?

22 A. An owner distribution is the use of company funds being  
23 given back to the owner or returned to the owner.

24 Q. How would an owner distribution affect working capital?

25 A. Whenever the money is written from the bank account for



1 the distribution, the bank account is less, and the bank  
2 account is a current asset, and so the working capital would  
3 decline.

4 Q. Is an owner distribution consistent -- it's -- is an  
5 owner distribution a consistent use of working capital  
6 proceeds, or I should say loan proceeds for working capital?

7 A. No.

8 Q. Why not?

9 A. Working capital loan proceeds, based on the definition  
10 of working capital, is to provide for current operations of  
11 the business, which includes those daily expenses associated  
12 with keeping the lights on.

13 Q. Is an owner distribution a current liability?

14 A. No.

15 Q. Now, prior to coming to court today, did I ask you to  
16 review Government Exhibit 41?

17 A. Yes.

18 Q. And you have the exhibit book, if you would like to turn  
19 to No. 41.

20 **THE COURT:** And, Ms. Burch, just to anticipate  
21 further objections, I do want to clarify the Court's ruling  
22 there.

23 Defendant [*sic*] may reference hearsay that he  
24 relied upon in forming his opinion and certainly anything  
25 reflected in the report, so I'll allow for the sorts of

1 conclusions and analysis and things of that sort, but not,  
2 you know, vague recollections of what was said here or there.

3 So let's formulate it that way, and then I'll allow  
4 Mr. Cogdell to object as we move forward.

5 MS. BURCH: Understood, Your Honor. Thank you.

6 Q. (By Ms. Burch) On Government Exhibit 41 --

7 MS. BURCH: And can you blow up the portion that  
8 refers to personal equity offset reserve, please.

9 Q. (By Ms. Burch) All right. Do you remember reviewing  
10 this e-mail outside of court?

11 A. Yes.

12 Q. All right. And this personal equity offset reserve that  
13 the loan proceeds were supposed to represent, what does that  
14 mean to you?

15 A. I -- I really have no idea what that term is.

16 Q. Now, are you familiar with acceptable methods for the  
17 financial tracing of funds through accounts?

18 A. Yes.

19 Q. And were you here in court today when Former Special  
20 Agent Whitworth -- I can't call him Investigator Whitworth.  
21 He'll always be Special Agent Whitworth to me. Can you --  
22 were you here when he went through the tracing of that?

23 A. Yes.

24 Q. And have you reviewed his tracing analysis prior to  
25 court today?

1 A. Yes.

2 Q. Does his analysis and his tracing of those funds, does  
3 that comport with standing accounting principles?

4 A. Yes.

5 MS. BURCH: Your Honor, I'll pass the witness.

6 THE COURT: And cross-examination for the  
7 Defendant, Mr. Cogdell?

8 MR. COGDELL: I tell you what, if we could have the  
9 morning break, it might allow me to shrink my cross down.

10 THE COURT: Okay.

11 MR. COGDELL: I was expecting to go further, but  
12 given what happened, I may go less, so --

13 THE COURT: Okay. And I'm loathe to sort of break  
14 up testimony if it would potentially disadvantage either  
15 side, but if that would actually help --

16 MR. COGDELL: I think it will.

17 THE COURT: -- you reformulate, we'll take our  
18 morning break at this point.

19 And, as a reminder to counsel, I am anticipating an  
20 11:30 break for the attorneys to do some legal work.

21 MR. COGDELL: Yes, sir.

22 THE COURT: So I'll instruct the Court Security  
23 Officers, the Marshals and staff to escort the jury for the  
24 morning break. We will take fifteen minutes and be back at  
25 roughly 10:25, anticipating to restart at 10:30. We do stand

1 in recess from this point until 10:30.

2 **COURT SECURITY OFFICER:** All rise.

3 (Recess taken; after which, the following took place in  
4 open court with the defendant present but without the jury.)

5 **THE COURT:** Please be seated. The Court is back on  
6 the record in United States of America versus Bart Wade  
7 Reagor, Case No. 2:21-CR-025-Z.

8 Before we bring the jury in, and I did not forget  
9 the jury, I just want to reiterate that we're back under the  
10 Court's previous Order in Limine instructions on that.

11 There is a section in Paragraph G about Government  
12 resources. Here, Ms. Burch, there was testimony elicited as  
13 to compensation received.

14 Is it your understanding that that was personal  
15 compensation as anticipated by the Order in Limine?

16 **MS. BURCH:** Your Honor, that that was compensation  
17 related to his expert designation that the Government paid  
18 him, and that that was an exception to the Court's limine  
19 order, was my understanding.

20 **THE COURT:** Yeah. I say here, however, both  
21 Defendant and Government may inquire as to the personal  
22 compensation received by any expert who testifies at trial.

23 So it's within that exception.

24 **MS. BURCH:** Yes, Your Honor.

25 **THE COURT:** Okay. That's my understanding. And,

1 of course, you may make reference now that that door is open  
2 to that compensation. I just wanted to make sure we're on  
3 the same page.

4 I'll now instruct the CSOs and Marshals to bring in  
5 the jury.

6 COURT SECURITY OFFICER: All rise for the jury.

7 (The jury returned to the courtroom, and the following  
8 took place in open court with the defendant and jury present.)

9 THE COURT: Please be seated.

10 At this point, Mr. Cogdell, you may begin your  
11 cross-examination of this witness.

12 MR. COGDELL: Thank you.

13 CROSS-EXAMINATION

14 BY MR. COGDELL:

15 Q. Mr. Dawson, I had a chance to introduce myself to you  
16 briefly outside the presence of the jury, but I'll do it now  
17 in their presence.

18 My name is Dan Cogdell. You've probably figured out  
19 that I'm one of the lawyers that represents Bart Reagor.  
20 It's nice to meet you, sir.

21 A. Nice to meet you.

22 Q. I expect to have you for fifteen or twenty minutes, but  
23 not much longer. Is that fair?

24 A. That's fair. Thank you.

25 Q. I want to start out by talking about, of course, a

1 lawyer's favorite thing, money, in terms of how -- how you're  
2 getting paid.

3 You indicated that you -- your firm was getting paid  
4 anywhere from \$50 to \$350 an hour?

5 A. Yes, sir.

6 Q. And that, in response to counsel's question, you said  
7 that you had spent 560 hours on the case?

8 A. Yes, total 560.

9 Q. Is that -- is that your hours or the total of your  
10 firm's?

11 A. The total of the firm.

12 Q. Okay. Because if you do 560 times 350, that's 200 or  
13 196, and you said you've been paid 87,000 to date?

14 A. That's correct.

15 Q. How much are you owed?

16 A. Right now, I haven't billed for anything else. I'll be  
17 owed for this week.

18 Q. Okay. And so you came here. You've been here through  
19 the entirety of this trial?

20 A. Yes.

21 Q. And I say the entirety of this trial. Maybe I'm the  
22 only one in the room that feels like it's been longer than  
23 one day, but the trial actually just started yesterday,  
24 right?

25 A. Yes, sir.

1 Q. And you heard all the witnesses?

2 A. Yes.

3 Q. You were sitting, I think, back row somewhere?

4 A. Yes.

5 Q. You heard Mr. Smith testify, and I won't -- I won't bore  
6 you with all of the things that I wrote out for the jury, but  
7 you heard his testimony, right?

8 A. Yes.

9 Q. And you heard his response or the response that he gave  
10 Mr. Reagor when Mr. Reagor directed him to utilize the  
11 proceeds — and it's Government's Exhibit 42 — awesome. Had  
12 you seen that before yesterday?

13 A. I don't remember seeing this.

14 Q. Okay. Now, you prepared a preliminary report back  
15 sometime ago, right?

16 A. Yes.

17 Q. December 20, something like that?

18 A. Around that time frame. I believe it was November.

19 Q. Okay. And, in preparing that report, you relied on a  
20 number of interviews and so forth, right?

21 A. Yes, sir.

22 Q. And you also relied on the loan agreement itself, right?

23 A. Yes, I had the loan agreement in place.

24 Q. And you've studied the loan agreement pretty carefully?

25 A. Yes.

1 Q. You feel like you've got -- as a CPA and with your  
2 investigative and other training, you feel like you've got a  
3 good hand on what the contract says and what it allows and  
4 what it doesn't allow, right?

5 A. I -- I believe that I've got a good understanding of the  
6 purpose. I don't necessarily opine or get into legal  
7 determinations as to allowance or not allowance.

8 Q. Okay.

9 A. But I understand the document.

10 Q. Well, you will obviously agree with me that Mr. Reagor  
11 is on trial, not for breaching a loan agreement, but for bank  
12 fraud. This is not a civil dispute. This is a criminal  
13 accusation, right?

14 A. Yes, sir.

15 Q. Now, in reviewing the loan agreement, would you agree  
16 with me that it doesn't define the term "working capital"?

17 A. Other than stating working capital, there's not a  
18 definition provided.

19 Q. Right. And there are definitions of -- I think there  
20 are seven pages of definitions of everything from dollar to  
21 mortgage to debt, business day, and so forth, but they don't  
22 define working capital?

23 A. Correct.

24 Q. And working capital is one of the most fundamental terms  
25 we're dealing with in terms of whether or not this contract



1 was violated or whether or not bank fraud occurred, right?

2 A. Yes, sir.

3 Q. So the most important term, or a very important term,  
4 working capital is not defined in the very document that this  
5 jury has to ultimately analyze and understand and make their  
6 decision based in part on; agree with me?

7 A. Correct.

8 Q. And, certainly, with lawyers that -- well, banks are in  
9 business like most of us, I guess, to make money, right?

10 A. Yes.

11 Q. And IBC is a recognized bank with, I think he said, 100  
12 locations, something like that, right?

13 A. A lot, yes.

14 Q. A significant financial institution. They didn't fall  
15 off a turnip truck last week. They're a significant  
16 financial player, right?

17 A. Yes.

18 Q. And they have -- they have resources, and they have  
19 lawyers that can draft these agreements to their satisfaction  
20 and to best protect them, right?

21 A. Yes.

22 Q. And we saw I think at least one of the lawyers testify  
23 yesterday about his crafting and his work and his effort and  
24 so forth in the construction of the loan agreement itself,  
25 right?

1 A. Yes.

2 Q. And, again, working capital is not defined in that loan  
3 agreement; agree with me?

4 A. Correct.

5 Q. I want to ask you a question about Section 2.1(b) [*sic*].  
6 And if this feels like a pop quiz, I apologize.

7 THE COURT: And just briefly, Mr. Cogdell, could  
8 you identify the exhibit number so that everybody can be on  
9 the same page?

10 MR. COGDELL: I certainly can. It is the loan  
11 agreement, which is Government's Exhibit --

12 MR. HAAG: 2.

13 MR. COGDELL: -- 2.

14 THE COURT: 2. Okay. You may proceed.

15 Q. (By Mr. Cogdell) Let's see if I can zoom in. Here,  
16 this says, sir, purpose. Borrower shall use the proceeds of  
17 the advancing term loan to provide working capital to  
18 borrower group. Borrower shall not use any advancing term  
19 loan proceeds, directly or indirectly, for purposes of  
20 purchasing or carrying any margin security or margin stock  
21 within the meaning of Regulation U of the Board of the  
22 Governors of the Federal Reserve system.

23 Now, it doesn't take much to be smarter than me, and  
24 I'll suggest to you that you probably are, but, at least, in  
25 my simple reading of that, that is a plain exclusion of what

1 the borrower can't use the funds for. In other words, it  
2 says you can't use them for that, right?

3 A. Correct.

4 Q. Now, does that exclusion, in your opinion, support an  
5 argument that utilizing the distributions to pay back a  
6 capital investment, does this exclusion support an argument  
7 that they could be used to repay an investor or owner for  
8 their capital contributions?

9 A. This exclusion is silent as to repayment through  
10 distributions of capital contributions.

11 Q. Right. Here's where I'm going, and I think you heard an  
12 analogy kind of like this yesterday. If this was an  
13 apartment lease, and they said no pets, you couldn't bring a  
14 cat, right?

15 A. Correct.

16 Q. But if that apartment lease said, no dogs, specifically  
17 excluded no dogs over 65 pounds, you could have a dog under  
18 65 pounds, right?

19 A. Yes.

20 Q. So my question to you is, by this specific exclusion,  
21 does that, in your expert opinion, allow an argument that, as  
22 long as they are not being used for this specific exclusion,  
23 they can be otherwise used by the borrowers?

24 MS. BURCH: Objection, Your Honor. This is asking  
25 for a legal conclusion about a contract that he didn't even

1     testify about on direct, and also the Court specifically  
2     asked us to not get into contact -- contract interpretation  
3     as far as ultimate conclusions.

4             **THE COURT:** That objection is sustained. Mr.  
5     Cogdell, you'll recall the witness qualifications and  
6     purposes for his expert designation.

7             This expert is pre-admitted as an expert in all of  
8     the matters reflected in his report as to accounting and  
9     forensic accounting, and everything relevant to that is fair  
10    game to the Defendant, but I will not allow you to elicit  
11    conclusions about legal terminology from a non-lawyer and a  
12    non-expert in that field.

13            **MR. COGDELL:** I --

14            **THE COURT:** That objection is sustained.

15            **MR. COGDELL:** I appreciate that. Perhaps the  
16    reason I was going there, Your Honor, is his preliminary  
17    opinion — I suppose, that in deference to counsel, I guess  
18    you didn't go there on direct — he issued a preliminary  
19    opinion where he opined as to whether these actions were  
20    consistent or inconsistent with the contract, and he gave  
21    some -- some examples of why.

22            **THE COURT:** Okay. Response, Ms. Burch, since it  
23    was your direct examination?

24            **MS. BURCH:** I believe his opinion was that it was  
25    inconsistent with or consistent with the proceeds of the

1 working capital loan and the working capital.

2 THE COURT: Okay. I'll ask you to speak into the  
3 microphone.

4 MS. BURCH: I'm sorry, Your Honor. That it was  
5 consistent or inconsistent with the concept of working  
6 capital and not specifically regarding this idea of contract  
7 interpretation that is the exclusionary principle that I  
8 think counsel is trying to get to.

9 THE COURT: Okay. The objection is sustained.  
10 I'll allow you to go into that direct testimony, but in terms  
11 of canons of interpretation and the exclusio unius that came  
12 out prior, we do have contract --

13 MR. COGDELL: You're so good with those terms.

14 THE COURT: Yeah, well, I try. So we do have  
15 experts who are designated to speak to contractual terms and  
16 that terminology. It's just not this expert.

17 So please redirect your line of questioning to what  
18 the witness is designated to testify to and also what he did  
19 testify to on direct.

20 MR. COGDELL: I'll do that. And that might have  
21 shortened my cross-examination even more significantly than I  
22 had planned on.

23 Q. (By Mr. Cogdell) But, to this point, we don't have a  
24 definition of working capital, right, in the contract?

25 A. In the contract.

1 Q. Your position is that utilizing these funds in the  
2 fashion that they were utilized was not consistent with  
3 working capital, correct?

4 A. Correct.

5 Q. But whether or not at the end of the day those funds were  
6 or were not properly used is going to be defined by the terms  
7 of the contract? It's the contract that controls, right?

8 A. Yes.

9 Q. And if there was earlier testimony about what an IBC  
10 banker believed or thought or wanted from a -- from your  
11 analysis of the contract, it doesn't matter what anybody said  
12 or thought; it's what the contract said. That's the Bible in  
13 terms of the disposition of the funds in this case; agree  
14 with me?

15 A. Yes.

16 MR. COGDELL: May I have one quick question or  
17 sidebar with counsel, Your Honor?

18 THE COURT: Yes. I'll direct the courtroom deputy  
19 to disable the microphones for purposes of that conversation.

20 And, in the interim, because the phrase has come up  
21 a couple of times, I'll provide the Court's legal definition  
22 of this Latin phrase that you've heard. It's *expressio unius*  
23 *est exclusio alterius*.

24 That is a mouthful of Latin that means -- it's a  
25 principle of contract construction or statutory construction

1 where things are listed in a class, things that are expressly  
2 mentioned; then the things that are not expressly mentioned  
3 are thereby excluded.

4 So lawyers use a separate body of authority called  
5 canons to interpret contracts, statutes, things of that sort,  
6 so I anticipate that you'll hear expert testimony later in  
7 the case from a law professor who teaches contracts. So I  
8 didn't want anybody to be potentially confused by this  
9 shorthand expressio unius that you've heard throughout the  
10 trial.

11 So I do anticipate that you'll get greater  
12 definition of the rules and the canons that we apply to  
13 contracts, but, here, this witness is an expert in forensic  
14 accounting, and, as you saw during direct, that's the purpose  
15 of that.

16 So I don't want you to infer that you will not ever  
17 learn this mystery word, but the Court will instruct you that  
18 that is the definition that has been referred to throughout  
19 testimony. It's just a canon of interpretation that lawyers  
20 may or may not use or courts may or may not use in  
21 interpreting contracts. And I do anticipate that you'll hear  
22 from a contract professor who teaches these things.

23 Is that -- is that an acceptable clarification on  
24 this Latin that's been hanging around the room?

25 **MR. COGDELL:** Not only is that -- that's a -- not

1 only is that an acceptable explanation, it's a perfect segue  
2 because I was going to ask Mr. Dawson:

3 Q. (By Mr. Cogdell) Do you know who Frank Snyder is? He's  
4 a -- if I told you he was a professor of law at Texas A&M  
5 University, would that name ring a bell to you?

6 A. No, sir.

7 Q. Do you know who a Steven Fried is, who is a banking  
8 expert from California?

9 A. No, sir.

10 Q. Would you agree with me, Mr. Dawson, that it is not  
11 uncommon, both in criminal cases and civil cases, for the  
12 plaintiffs to have experts, for the defense to have experts  
13 and in criminal cases for the government to have experts and  
14 for the defense to have experts? That's kind of as normal as  
15 the wind blowing in West Texas, is it not?

16 A. Yes, that's common.

17 MR. COGDELL: Okay. With that, I'll pass the  
18 witness. Thank you.

19 THE COURT: And redirect by the Government,  
20 Ms. Burch?

21 MR. COGDELL: Let me get out of your way. I'm  
22 sorry.

23 REDIRECT EXAMINATION

24 BY MS. BURCH:

25 Q. Mr. Cogdell asked you about your hours and things like



1 that related to this case. Do you recall that line of  
2 questioning?

3 A. Yes.

4 Q. When did you first get hired by the United States?

5 A. It was May of 2020.

6 MS. BURCH: No further questions.

7 THE COURT: Okay. At this point, the Government  
8 may call its next witness; although, I think we're at the end  
9 of the witness list.

10 MR. HAAG: Yes, Your Honor. The United States of  
11 America rests.

12 THE COURT: Okay. So, Members of the Jury --  
13 At this point, I should ask, may this witness be  
14 excused?

15 MR. HAAG: Yes, Your Honor.

16 THE COURT: And, Mr. Cogdell, any objection to  
17 excusing this witness?

18 MR. COGDELL: No, sir.

19 THE COURT: And you are excused. You may step  
20 down. Of course, subject to the parties' application of the  
21 rule, you may remain in the gallery. You are not subject to  
22 the rule.

23 MR. HAAG: Yes, Your Honor. And for the Court's --  
24 we may call this witness for rebuttal. I'm not sure at this  
25 time, but --

1           **THE COURT:** So, subject to callback, you are  
2       excused. And you have also been exempted from the rule by  
3       agreement of the parties, so you may remain in the gallery.

4           **(Witness leaves the stand.)**

5           **THE COURT:** And, Mr. Haag, did I hear another  
6       witness, or did I hear -- I'm sorry, I may have forgot. Did  
7       the Government rest its case?

8           **MR. HAAG:** Yes, Your Honor, we did.

9           **THE COURT:** Okay. Members of the Jury, the  
10      Government rests its case. There is a matter that I must  
11      take outside the presence of the jury.

12           I'm going to instruct the CSOs and Marshals to  
13      escort you back to the jury room. I will then inquire with  
14      the attorneys about their time limits, and the Defendant's  
15      case-in-chief. I'll try to figure out the lunch schedule,  
16      their anticipated order of witnesses, and then when you  
17      return, I'll give you an update on the plans for lunch and  
18      then the remainder of the afternoon.

19           But we do have a motions practice that must be  
20      taken up outside the presence of the jury. You'll be excused  
21      for that, and when you return, you'll know your lunch plans  
22      and your afternoon plans.

23           So, at this point, I'll instruct the Court Security  
24      Officers and Marshals to escort the jury.

25           **COURT SECURITY OFFICER:** All rise.

1           **(The jury leaves the courtroom.)**

2           **THE COURT:** Please be seated. Mr. Cogdell, does  
3 the Defendant now move for a Judgment of Acquittal pursuant  
4 to Federal Rule of Criminal Procedure 29(a)?

5           **MR. COGDELL:** He does, Your Honor. And, in  
6 specific, the false statement to a financial institution  
7 count. I would point the Court out to Mr. Smith's testimony  
8 yesterday that it's unquestioned that he was the lead, that  
9 is, Mr. Smith was the lead.

10           **THE COURT:** And I'll ask -- I'll ask you to mike  
11 up --

12           **MR. COGDELL:** Yes, sir.

13           **THE COURT:** -- for the court reporter's benefit.

14           **MR. COGDELL:** Sure. I'm sorry. It's unquestioned  
15 that Mr. Smith was taking the lead on behalf of the  
16 negotiations for the Reagor-Dykes Auto Group in the loan  
17 application with IBC, and that he was the person  
18 communicating and the lead during the communications.

19           And Mr. Smith testified yesterday that Bart Reagor  
20 never asked me to submit any false documents to IBC. That  
21 testimony was brought out through their witness. There is no  
22 testimony or suggestion that Reagor asked anyone else to  
23 submit false loan applications or false documents to IBC.

24           So, on that basis, I believe the Government has  
25 failed to prove its case to where a rational --

1           **MR. NORRIS:** You want this on the screen?

2           **MR. COGDELL:** Sure. We're going to get into the  
3 jury charge real quick, but --

4           **MR. POWELL:** You need to take the ELMO off.

5           **MR. COGDELL:** Yeah. Can you take the ELMO off. It  
6 is not on yet.

7           **(Technical difficulties.)**

8           **MR. COGDELL:** On the proposed jury instructions, in  
9 order to find him guilty, the proof would have to satisfy a  
10 rational finder of fact beyond a reasonable doubt that he  
11 knowingly executed a scheme, and the scheme or artifice was  
12 executed to obtain money, and it was executed by means of  
13 false or fraudulent pretenses or representations, and that  
14 the false, fraudulent pretenses or representations were  
15 material.

16           There is no evidence that anyone other than --  
17 there is no evidence that anyone other than Shane Smith  
18 submitted documents to IBC, so, on that basis, I believe the  
19 Government has failed specifically on the false statement  
20 case to IBC.

21           **THE COURT:** Okay. At this time, I'll invite  
22 response from the Government on Defendant's Motion for a  
23 Judgment of Acquittal.

24           **MR. HAAG:** Yes, Your Honor, as I understand, the  
25 Defendant's motion is predicated on there not being a false

1 statement in this case.

2 The testimony that this Court heard was that in  
3 April 17, 2017, the defendant, Shane Smith, and Mr. Dykes  
4 were all present in a meeting with IBC representatives. Mr.  
5 Schonacher, Mr. Woodring both testified that the defendant  
6 and the other representatives of the Reagor-Dykes Auto Group  
7 said that they needed a working capital loan, and that was  
8 the sole purpose of the loan mentioned in that meeting. That  
9 purpose is reflected throughout this case, through the  
10 signing of the documents on July 13th of 2017.

11 As this Court is well aware, a false statement not  
12 only includes a false statement, but an omission of a  
13 material fact. Here, the material fact that was omitted was,  
14 in fact, the purpose of the loan was not solely working  
15 capital. The purpose of the loan was to enrich the  
16 defendant, and, therefore, we believe that the Court should  
17 deny the motion.

18 **THE COURT:** Okay. The motion is denied for the  
19 reasons stated in the Government's response, and the Court's  
20 separate and independent determination that the evidence  
21 presented is sufficient to sustain a conviction on all four  
22 [sic] counts in the Indictment as required by Federal Rule of  
23 Criminal Procedure 29(a).

24 I'll remind Defense Counsel, there is an  
25 opportunity to renew that motion at the close of Defendant's

1 case-in-chief.

2 At this point, I want to discuss timing. I know  
3 that I need to dismiss the attorneys for essentially an  
4 ancillary proceeding at 11:30. I have full intentions of  
5 doing so.

6 I don't want to interrupt your witness lineup in  
7 any way, Mr. Cogdell. What are your proposals for the next  
8 thirty minutes?

9 **MR. COGDELL:** We didn't -- well, I asked the Court  
10 yesterday -- I asked the Court yesterday if we could have  
11 until after lunch to present -- to begin presenting our  
12 witnesses, and the Court granted me that.

13 **THE COURT:** Okay. I did not recall that. I think  
14 you -- yes, that is my recollection as well.

15 Do we need to take up any of the pending motions  
16 that were filed under seal regarding witnesses who may or may  
17 not appear?

18 **MR. COGDELL:** I don't believe so, Your Honor.

19 **THE COURT:** Okay. This is what we'll do. I will  
20 bring the jury back. I'll instruct them that they will  
21 receive an early lunch break. Although, I'll need to  
22 coordinate with the timing of catering and the rest, but  
23 we'll stand in recess until the conclusion of that lunch  
24 break.

25 Do we think a 1:00 start time works for the defense

1 team?

2 MR. COGDELL: I think that should be fine, Your  
3 Honor.

4 THE COURT: Okay. So let's do a lot of  
5 housekeeping and cleanup in those intervening moments. And  
6 good news, like everything in West Texas, we start early, and  
7 lunch has arrived. So I think I'll be able to announce to  
8 the jury that they'll go straight into an early lunch.

9 I do want to make some findings just for the  
10 record. We have a lot of motions practice that hasn't  
11 received rulings from the Court specific to some of those  
12 sealed documents.

13 I'll instruct the CSOs and Marshals to seal this  
14 courtroom for that proceeding. This Court will just make  
15 some findings as to that motions practice. That will  
16 adjudicate those motions that are pending. And, after that,  
17 the parties will be free to move into the Defendant's  
18 case-in-chief, move into the lunch hour, and then we'll  
19 reconvene at 1:00. So that's -- that's the itinerary for the  
20 next two hours.

21 So I'll instruct the CSOs and Marshals to bring in  
22 the jury.

23 COURT SECURITY OFFICER: All rise for the jury.

24 (The jury returned to the courtroom.)

25 THE COURT: Okay. Please be seated. After

1 conferring with the counsel in this case and confirming that  
2 catering has arrived early, it's the Court's determination  
3 that the best use of judicial resources is to recess for an  
4 early lunch, beginning at 11:00, and then to stand in recess  
5 through 1:00. So you'll begin your lunch break at this  
6 point.

7 I will admonish you to follow the Court's prior  
8 instructions on not discussing this case, even amongst  
9 yourselves. Please do not discuss this case with friends or  
10 family members, and please do not use independent means of  
11 research to access information about this case, its  
12 participants, the defendant. We don't allow for Google or  
13 Internet researching of any kind as we have discussed at  
14 multiple breaks.

15 Everything you need to know about this case is  
16 within the four walls of this courtroom. So I'll just  
17 admonish you to follow those instructions. If I missed any  
18 of the admonishments I'll incorporate by reference what I've  
19 told you before.

20 When we return, the Defendant will present his  
21 case-in-chief, so, from that point forward, it will be the  
22 Defendant's case. I'm advised by counsel that 1:00 is the  
23 best start time, and you will be essentially in break until  
24 1:00.

25 So keep your jury badges on. Do not talk to any --



1 anybody in the courtroom. That jury badge identifies you as  
2 a juror, so it will keep court staff away and attorneys away,  
3 so just use your badge.

4 You may leave any notes, notepads in your seats.  
5 We'll place those under secure lock and key, and they will be  
6 there when you return to your seat.

7 So, at this point, I am dismissing you for your  
8 lunch break.

9 **COURT SECURITY OFFICER:** All rise.

10 (The jury leaves the courtroom.)

11 -----

12

13 (Sealed Motions Hearing held and filed under separate  
14 sealed volume in Sealed Hearing Volume I of I, 10/13/2021.)

15

16 -----

17 (The following took place in open court with the  
18 defendant present, but without the jury.)

19 **THE COURT:** Please be seated. Okay. Just very  
20 briefly, some housekeeping. We are working diligently to  
21 prepare a consolidated Word document version of the proposed  
22 jury charge that includes requested and disputed language  
23 from both parties. You'll have that shortly.

24 I wanted to flag one case relevant to unanimity.  
25 I'll expect the parties to be prepared to argue that case on

1 requested unanimity language. *United States versus Sila*,  
2 S-I-L-A, 978 F.3d 264. And that's a 2020 case. The parties  
3 have cited cases that predate that newer case, and so I think  
4 you should add that to your inventory.

5 We will argue that at the Charge Conference, and  
6 that might control our discussion of that particular  
7 instruction.

8 Mr. Cogdell, are you prepared to present your  
9 case-in-chief?

10 MR. COGDELL: We are prepared --

11 THE COURT: We, okay.

12 MR. COGDELL: -- to present our case-in-chief, yes,  
13 sir.

14 We do have an issue we probably ought to approach  
15 on regarding Mr. Darter.

16 THE COURT: Okay.

17 MR. COGDELL: He's not going to be our first  
18 witness, but --

19 (The following took place at the bench and outside the  
20 hearing of open court.)

21 THE COURT: And, again, I will just instruct you to  
22 be careful to speak into the microphone.

23 MR. COGDELL: Yes, sir. There is a motion in  
24 limine that prevents each side from discussing Mr. Reagor's  
25 net worth. That said, it's important for the jury to

1 understand that that -- sort of a general picture of Mr.  
2 Reagor's wealth at the time of this loan, meaning Mr. Darter  
3 is prepared to testify that Mr. Reagor had substantial  
4 capital in addition to the 1.6 or 7 that he got out of this.  
5 In other words, he could have done the same thing out of his  
6 other money, and I think the jury needs to understand that.

7 **THE COURT:** Okay. Response from the Government?

8 **MR. HAAG:** Yes, Your Honor. The Defense filed a  
9 motion in limine asking that we not get into personal net  
10 worth. We agreed to that. The Court ordered that.

11 It is extremely unfair and improper to switch after  
12 the Government has rested and change the rules now that the  
13 Government has rested.

14 **THE COURT:** Well, it's an Order in Limine, so the  
15 instruction is to approach on the point. This is where we  
16 hear argument on that. I do agree we have now redacted  
17 exhibits to omit references to net worth.

18 **MR. COGDELL:** And if we need to induct that to go  
19 back and make it fair to the Government, that's fine. But  
20 what I wish --

21 **THE COURT:** And remind me again. I'm sorry,  
22 refresh my recollection. Chuck Darter is who?

23 **MR. COGDELL:** Mr. Reagor's CPA.

24 **THE COURT:** Okay. Not an expert. I think your  
25 experts are Franklin Snyder --

1           **MR. COGDELL:** He's not listed as an expert, that's  
2 correct. Yes, sir.

3           **THE COURT:** Okay. I don't think I'm going to allow  
4 it at this point because this deep into the trial, all the  
5 redactions have been made based on the Defendant's own motion  
6 that references to net worth are potentially prejudicial.

7           I've instructed the Government to strike and redact  
8 net worth statements exhibit by exhibit through all the  
9 witnesses that we've had up to this point, and the Court does  
10 find under 403 that whatever probative value resides in that  
11 anticipated testimony is easily outweighed by the substantial  
12 prejudice to the Government, but then also potential  
13 confusion to the jury.

14           We've done this case strictly on the transactions  
15 that the parties agreed to and working diligently to reduce  
16 the list to agreed exhibits, agreed witnesses, and we've  
17 omitted net worth up to this point.

18           So to pivot to a conversation about additional  
19 accounts, all of which are outside the scope of anything the  
20 Government was allowed to present, would be unfair prejudice  
21 to the Government, but also potentially confusing to the  
22 jury.

23           **MR. POWELL:** Your Honor, can I offer somewhat of a  
24 compromise?

25           **THE COURT:** What?

1           **MR. POWELL:** Can I offer somewhat of a compromise?

2           **THE COURT:** As you have your A&M ring next to my UT  
3 mug. Let me move that.

4           **MR. POWELL:** I know. I know. I mean, I was -- it  
5 was kind of --

6           **MR. COGDELL:** I'm with you on that.

7           **MR. POWELL:** -- burning me a little bit when I was  
8 sitting there, Your Honor.

9           **THE COURT:** Well, my wife's an Aggie, so it's okay.

10          **MR. POWELL:** So, anyway, so I think -- and our  
11 position is, there's been an inference made that Mr. Reagor  
12 needed this 1.7 million to take care of his bills. I think  
13 that was with -- with the witnesses, that's been done quite a  
14 bit.

15               If we could just when the accountant testifies ask  
16 him some minor questions such as -- not ask what his net  
17 worth is, but ask did he have -- was there a need for him to  
18 get this 1.7 to pay his bills, to do the things that he  
19 wanted to do, to pay the house remodels, and things of that  
20 nature. Did he need that money in order to pay those bills,  
21 or did he have sufficient funds to take care of those issues  
22 prior --

23          **THE COURT:** I will allow you to make that argument  
24 based on the pre-admitted exhibits that the parties have  
25 agreed to.

1           So if Mr. Darter is familiar -- because we did the  
2       redactions consistent with the Court's ruling that net worth  
3       will not be a part of this case, but if you want to point out  
4       these checks, these checks, these checks, this account  
5       statement, which omits net worth statements, all reflect that  
6       there were resources available, and if you total those --

7           **MR. POWELL:** Yes, sir.

8           **THE COURT:** -- that he had more ability to pay than  
9       has been represented by the Government, if you do it on the  
10      exhibits, I'm fine with that. But just general statements  
11      about net worth have not been a part of this case thus far.

12          **MR. POWELL:** I'm not going to ask his net worth. I  
13      will not ask his net worth, I promise.

14          **MR. HAAG:** I don't want to get into other accounts,  
15      okay, because the only account that's at issue obviously is  
16      the one that the IBC loan proceeds went into, and that's the  
17      only one we've talked about.

18          **THE COURT:** Oh, I'm speaking to exhibits, so --

19          **MR. HAAG:** Exactly.

20          **MR. FRAUSTO:** And the other ones are the business  
21      accounts, so the only personal account he has is the one at  
22      Prosperity Bank.

23          **MR. COGDELL:** Surely, you're not going to preclude  
24      Mr. Reagor from testifying as to, not necessarily his net  
25      worth, but he had access to other funds.

1           **THE COURT:** No, I'm not going to make that ruling,  
2 no, but the idea that the accountant is going to state that  
3 he had a billion dollars.

4           **MR. COGDELL:** Oh, no --

5           **MR. POWELL:** He's not going to --

6           **MR. COGDELL:** -- he's not going --

7           **MR. POWELL:** -- say that.

8           **MR. COGDELL:** -- to state anything.

9           **MR. POWELL:** He's not going to say that.

10          **MR. COGDELL:** He's not going to state anything.  
11 He's not going to state his net worth. He's not going to  
12 state a billion dollars. He's going to say --

13          **MR. FRAUSTO:** That's two people talking to the  
14 Court, so --

15          **MR. COGDELL:** Sorry. I'm sorry, my bad.

16          **MR. POWELL:** Sorry.

17          **THE COURT:** Mr. Cogdell, I'll announce each, and  
18 then we'll move the microphone. Mr. Cogdell?

19          **MR. COGDELL:** He's not going to say he had X, Y, or  
20 Z amount of money. He's not going to state his net worth.  
21 He's simply going to say that he had resources that allowed  
22 him to maintain the lifestyle that he was maintaining without  
23 the need for --

24          **THE COURT:** Can he do that using the exhibits that  
25 have been pre-admitted?

1           **MR. COGDELL:** I don't know if he's seen those  
2 exhibits, but he's been Mr. Reagor's CPA for --

3           **MR. POWELL:** The last --

4           **MR. COGDELL:** -- twenty years.

5           **MR. POWELL:** -- twenty years.

6           **THE COURT:** Okay. Mr. Haag?

7           **MR. HAAG:** Yes, Your Honor. Again, regardless of  
8 whether he could have paid them with other funds doesn't  
9 matter. The point is, he used the working capital loan  
10 proceeds to make these payments.

11           **THE COURT:** Right.

12           **MR. HAAG:** So, again, if Mr. Darter wants to talk  
13 about anything in that bank account with Prosperity Bank, be  
14 my guest, but we would object to him bringing up any other  
15 accounts or outside wealth, because y'all didn't want it  
16 coming in.

17           **THE COURT:** Now, Mr. Powell?

18           **MR. POWELL:** I'm sorry. I know you're moving the  
19 mike, Your Honor.

20           I guess the position goes back to the inference has  
21 been made now that the reason that the loan payments via that  
22 loan -- the reason that he took this money and committed  
23 fraud is because he needed those assets to take care of his  
24 house and --

25           **THE COURT:** I don't think there's been an inference



1 as to his personal insolvency. Now, insolvency may be an  
2 event of default under the loan agreement.

3 But the reason the Government, as I understand it,  
4 put on evidence of tracing is because that's specific to the  
5 elements of the offense. These funds originated in a loan  
6 with particular strictures on their disbursement, and then  
7 were disbursed into personal accounts.

8 Now, if it was for the reasons of a house, for the  
9 reason of paying a pool boy, whatever, that's all fine, but I  
10 have not discerned an inference that he was bankrupt; he was  
11 going into insolvency.

12 They very carefully avoided reference of that  
13 consistent to the Court's orders in limine and otherwise, so,  
14 at this point, the Court will not allow references to net  
15 worth.

16 **MR. POWELL:** I'm not asking that, and, Your  
17 Honor --

18 **THE COURT:** But ability to pay --

19 **MR. POWELL:** -- I want to make abundantly clear,  
20 I'm not going to say, did he have 20 million in the bank, did  
21 he have 5,000,000 in the bank. I'm not going to ask him how  
22 much money he had in the bank.

23 All I want to ask him is, outside of this \$1.7  
24 million, did he have the ability to make the payments to take  
25 care of his daily affairs, and that included his house

1 remodel that he had going on at the time. That's all I'm  
2 going to ask him about. That's it.

3 **THE COURT:** Mr. Haag?

4 **MR. HAAG:** Yes, Your Honor. I mean, whether you  
5 ask it that way, I mean, you're trying to do an end-around  
6 around the limine order, I mean --

7 **MR. POWELL:** That's why I'm standing in front of  
8 the bench.

9 **MR. HAAG:** No, what I'm saying -- but what I'm  
10 saying is, the Court said we're not going to talk about net  
11 worth. We're just going to talk about this, so that's what  
12 we talked about.

13 If you ask his accountant, did he have other money  
14 somewhere he could have paid all of this, and he says, yes,  
15 the jury is going to come away thinking he's got billions,  
16 trillions, who knows how much they've got, but you just leave  
17 them hanging with this wealth out there --

18 **THE COURT:** Yeah. I'm not going to allow it. The  
19 reason I have ordered in the limine, but then now will rule  
20 that net worth is not relevant under 401, that it's  
21 substantially prejudicial under 403, that it's potentially  
22 confusing to the jury. It's precisely because of the other  
23 reasons reflected in the Court's Order in Limine relevant to  
24 civil proceedings and also criminal proceedings.

25 I don't want this case tried on the macro

1 denominator of funds and civil litigation, who owes who in  
2 this bankruptcy proceeding, this civil case, even some of the  
3 ancillary criminal proceedings regarding RDAG employees.

4 This was charged, as you stated, in your own  
5 Defendant's Amended Motion in Limine, ECF No. 46: The  
6 Government's allegations are specific. In particular, the  
7 Government claims Mr. Reagor: No. 1. Represented the IBC  
8 loan was for working capital, which you're allowed to go into  
9 that definition. No. 2. Deposited the IBC loan funds into  
10 his personal account on two dates.

11 For that reason, running that far afield of that  
12 and into other accounts the Government has not referenced and  
13 was studious in avoiding reference to, at this point would be  
14 prejudicial to the Government, and it would be confusing to  
15 this jury.

16 So I will not allow references to net worth.  
17 That's the Court's ruling, and you may proceed according to  
18 that.

19 **(The following took place in the hearing of open court.)**

20 **THE COURT:** Okay. With that ruling from the Court,  
21 is there any additional housekeeping the Court may attend to  
22 before we call the jury back?

23 **MR. HAAG:** No, Your Honor.

24 **THE COURT:** Anything from the Defense?

25 **MR. COGDELL:** No, sir.

1           **THE COURT:** Okay. At this point, I will instruct  
2 the CSOs and Marshals to bring back the jury.

3           **COURT SECURITY OFFICER:** All rise for the jury.

4           (The jury returned to the courtroom, and the following  
5 took place in open court with the defendant and jury present.)

6           **THE COURT:** At this point, Defendant will begin his  
7 case-in-chief.

8           And, at this time, Mr. Cogdell, you may call your  
9 first witness.

10                                   **DEFENDANT'S EVIDENCE**

11           **MR. NORRIS:** It's Mr. Norris, Your Honor. We call  
12 Frank Snyder.

13           **THE COURT:** And, Professor Snyder, you may approach  
14 the witness chair. Please remain standing for administration  
15 of the oath. My courtroom deputy will do that at this time.

16           (The witness was sworn by the courtroom deputy.)

17           **THE COURT:** Please take your seat. And the Court  
18 admonishes you to speak loudly and clearly into the  
19 microphone. You may pull that closer if that helps.

20           I'll go ahead and instruct the jury that the  
21 parties have agreed that this witness is pre-admitted as an  
22 expert, so this now is expert testimony. You may treat it as  
23 such.

24           And, Mr. Norris, you may proceed.

25           **MR. NORRIS:** Thank you, Your Honor.

1                                   **FRANKLIN SNYDER,**  
2                   having been first duly sworn, testified as follows:

3                                   **DIRECT EXAMINATION**

4           **BY MR. NORRIS:**

5           Q.    Mr. Snyder, could you state your full name for the  
6           record, please.

7           A.    Franklin Gregory Snyder.

8           Q.    And how are you employed, sir? Are you the professor,  
9           law professor that we heard about earlier?

10          A.    I'm professor of law at Texas A&M University School of  
11          Law in Fort Worth.

12          Q.    How long have you been a professor at Texas A&M?

13          A.    Well, I've been at the law school since 2000. It became  
14          part of Texas A&M in 2014, so I've been with A&M for  
15          six years.

16          Q.    Specifically, what courses do you teach at Texas A&M Law  
17          School?

18          A.    I teach contract law, which is the basic course on  
19          contracts in American law schools. I teach business  
20          organizations, which is a class that involves corporations,  
21          LLCs, and limited partnerships and things like that. I teach  
22          unfair competition, securities regulation and a class called  
23          advanced business law.

24          Q.    Now, as part of being a professor, do you also write  
25          books and papers about those same topics that you teach?

1 A. I do.

2 Q. And have you -- can you briefly tell us about some of  
3 the books you've written on those topics, sir?

4 A. Well, there's a casebook that I coauthored which is used  
5 in the first year contract's course.

6 Then there are three guides that are used by  
7 practitioners and law students in something called the  
8 Hornbook Series, which is legal publications. One is on  
9 secured transactions, which are basically loans secured by  
10 things like cars that are as implicated in this case. One is  
11 on payment systems, which is a lot of checks and credit cards  
12 and electronics funds transfers, and one is on sales of  
13 goods.

14 Q. So, generally, sir, these topics that you teach and that  
15 you write about, are those similar to the topics that we've  
16 been discussing during this trial?

17 A. Yes, they are.

18 Q. Is it fair to say that you are -- well, I guess you've  
19 already been recognized by the Court as an expert, but is it  
20 fair to say that you're an expert in those topics that we've  
21 been talking about in this trial?

22 A. Yeah, with due modesty, yes.

23 Q. I understand. Okay. And are you also a licensed  
24 attorney in addition to just being a professor?

25 A. Yes. I'm licensed in the District of Columbia and

1 Maryland, licensed by the U.S. Supreme Court, the U.S. Court  
2 of Appeals for the D.C. Circuit, the Court of Appeals for the  
3 Federal Circuit, and the U.S. District Court for the District  
4 of Columbia.

5 Q. Did you spend any time in private practice before  
6 becoming a professor?

7 A. Before teaching, I was an associate and a partner at the  
8 Washington office of a large international law firm called  
9 Latham & Watkins.

10 Q. Okay. Now, let's transition to focusing on the topic at  
11 hand.

12 A. Uh-huh.

13 Q. Can you give us a brief overview of what you've reviewed  
14 for your testimony here today in this case.

15 A. Well, I've reviewed all of the exhibits that have been  
16 introduced in front of the jury, including, most importantly,  
17 the loan agreement, and I've listened to all of the testimony  
18 of the fact witnesses in the case. I've been here  
19 throughout.

20 Q. So, to be clear, you've heard the testimony of all the  
21 Government's witnesses?

22 A. I have.

23 Q. And you've reviewed the loan agreement that's at issue  
24 in this case that was executed on July 13th, 2017?

25 A. Yes.

1 Q. Did you also review all of the prior versions back and  
2 forth of that loan agreement?

3 A. Yes, I did.

4 Q. Now, bottom line up front, based on all of this evidence  
5 that you've heard in this case so far and everything that  
6 you've reviewed, have you heard anything from any of these  
7 government witnesses that would have constituted a default  
8 under this loan agreement, in your expert opinion?

9 A. No, I've not.

10 Q. A similar question. Based on all the evidence you've  
11 reviewed and all the testimony that you've heard from these  
12 government witnesses, is there any evidence that this  
13 distribution that was taken by Bart Reagor and Rick Dykes  
14 would trigger an event of default under the terms of this  
15 contract, in your expert opinion?

16 MR. FRAUSTO: Your Honor, I'm going to object. If  
17 the Court would refer the Defense attorney to Section F of  
18 the motion in limine, whether or not the -- Mr. Reagor  
19 violated this contract agreement; it's part of the motion in  
20 limine.

21 THE COURT: Overruled. This is the expert who was  
22 designated, pre-admitted by agreement of the parties to  
23 discuss contractual terms. Thus far, this line of inquiry is  
24 focused on legal terms that do appear in that loan document,  
25 including event of default.



1 And, as long as we don't run afoul of contractual  
2 terms and this professor's understanding of those as an  
3 expert, I will allow it. So that objection is overruled.

4 Q. (By Mr. Norris) You want me to re-ask it.

5 A. I think I --

6 THE COURT: Please re-ask the --

7 A. -- can answer, but I want to --

8 THE COURT: I'm sorry. Please re-ask the question  
9 since that was a lengthy ruling.

10 MR. NORRIS: Yes, sir. Thank you.

11 Q. (By Mr. Norris) Okay. Mr. Snyder, Professor Snyder,  
12 excuse me, one more time. Have you, after listening to all  
13 the Government's evidence, all of their witnesses, after  
14 reviewing everything that you've reviewed, have you seen or  
15 heard any evidence that this distribution that was taken by  
16 Bart Reagor and Rick Dykes would trigger an event of default  
17 under the terms of this contract, in your expert opinion?

18 A. No. None of the evidence that I've heard would, in my  
19 opinion, have triggered an event of default as the -- again,  
20 as the terms are used in the contract.

21 Q. Okay. Now, last of the big questions, and then we'll  
22 get into the details. Okay.

23 Even assuming that Mr. Reagor made the statements to IBC  
24 Bank that the Government's witnesses for the last day and a  
25 half or so claimed that he made, even assuming that, all of

1 that is true, regarding the purpose of a loan's proceeds,  
2 does any of that change your opinion that you just stated at  
3 all?

4 A. No.

5 Q. Why not?

6 A. Because several reasons for that. But the first reason  
7 is that representations made by the parties before the  
8 contract is signed are excluded by the contract from any  
9 consideration in what it means.

10 So, therefore, if Mr. Reagor had said, I plan on using  
11 this for working capital, that -- and the bank said, great,  
12 that would be an agreement between them, an oral agreement,  
13 and oral agreements are specifically barred under the merger  
14 clause put into the contract by the bank.

15 Q. And --

16 A. And the merger clause -- the merger clause is that  
17 provision that was quoted earlier, which says this is our  
18 entire agreement; there are no other oral agreements. I  
19 forget what paragraph it is.

20 But that's a standard clause. And what that means is,  
21 Mr. Reagor's statements, the bank's statements, what the bank  
22 thought, what the bank's lawyers thought, even what I think  
23 actually is not relevant. It's what the contract says that's  
24 relevant.

25 Q. Okay. And just to refresh our --

1 A. Oh, and -- I'm sorry, another point. Representations  
2 change during the course of a negotiation.

3 Q. Is that common --

4 A. It is --

5 Q. -- in a negotiation?

6 A. -- very common that something said at the initial  
7 meeting is repeated or changed or something else happens over  
8 the course of the negotiation.

9 You don't always get the same interest rate that they  
10 told you you might get at the first meeting. You don't  
11 always get the same protections that you get at the second  
12 meeting.

13 So that's why we exclude those things basically, because  
14 they just -- they're not relevant to what the parties  
15 actually agree on.

16 Q. So am I getting you right when I say that basically the  
17 only thing that matters between these parties is the loan  
18 agreement?

19 A. Between the parties and whether the distributions were  
20 proper under the agreement, yes. The only thing that matters  
21 is what the contract says, in my opinion.

22 Q. Okay. Okay. Well, let's talk about what the contract  
23 says. So let's take a step back and kind of look at this  
24 loan agreement in the four corners of it.

25 How long is that entire loan agreement, Government

1 Exhibit 2?

2 A. Oh, there's -- I think it's 27 pages of text, and then I  
3 don't know how many pages of exhibits that are added to the  
4 end.

5 Q. Okay. And we'll get more into the details of this in a  
6 second, but out of all of those 27 pages of text that you've  
7 reviewed, do you know how many times that loan agreement  
8 mentions the term "working capital"?

9 A. Yes, once.

10 Q. Now, which parts, in your opinion, of this contract or  
11 this loan agreement, excuse me, are the important parts,  
12 generally speaking?

13 A. The question's a little bit vague. You mean important  
14 parts for my opinion on this, or the important parts of the  
15 contract in general?

16 Q. Well, what is the most -- so in terms -- let's talk  
17 about the covenants in the contract.

18 A. Okay.

19 Q. Can you explain what a covenant is.

20 A. Yes. Contract -- contracts with 27 pages in them have  
21 lots of materials in them. Some things are very important;  
22 some things are much less important; some things are,  
23 frankly, we being lawyers, are things that are in there  
24 because they were in a form that we used twenty years ago.

25 So they're these very long complex documents. The

1 important parts, the things that parties have to do like pay  
2 the bills when it's due, keep insurance on the property,  
3 provide title insurance, all of those sorts of things are  
4 called affirmative covenants. And there's a section of the  
5 contract, Section 5, which lists a number — I forget the  
6 number — a number of affirmative contracts, the important  
7 promises that are made.

8 Then there are things that you can't do, like, you can't  
9 sell the property to someone else. You can't take out an  
10 extra mortgage on it. You can't make distributions. Those  
11 are what we call negative covenants. And those are in  
12 section -- or, I'm sorry, Article 6, I think it is, in the  
13 contract.

14 So those are the two big -- everything that's important  
15 to the parties, the part that they focus on in negotiations  
16 is in those two parts.

17 There are other things. We have different legal terms,  
18 which are not important here, for the other kinds of things  
19 that happen in contracts, but covenants are the big ones.

20 Q. Okay. So can I direct your attention to the actual loan  
21 agreement, sir.

22 A. Sure.

23 Q. Okay. So I'm showing you Government Exhibit 2 on the  
24 ELMO here. Is this the negative covenants section that you  
25 were just mentioning?

1 A. Yes.

2 Q. Okay. And can you explain -- let's start with  
3 Section 7.11 here. Can you explain to the jury what's  
4 important and what this means, in your professional opinion?

5 A. All right. Well, we see -- you know, this -- again,  
6 this is under the covenant section. Transactions with  
7 Affiliates. No borrower will, nor will it permit any other  
8 borrower group member to, sell, lease, or otherwise transfer  
9 any property or assets to, or purchase, lease or otherwise  
10 acquire any property or assets from, or otherwise engage in  
11 any other transactions with any of its affiliates.

12 Okay. So basically that's a covenant that none of the  
13 affiliates will transfer anything of value between  
14 themselves, and that would include cash. All right. So  
15 that's there.

16 Now, affiliates is designed -- I'm sorry, is defined  
17 under the definition section. And affiliates, as its  
18 defined, are not only the entities, the various RDAG entities  
19 that I think are listed there, but it includes everybody who  
20 controls them, which would be Mr. Reagor and Mr. Dykes.

21 So any transfers between Mr. Reagor and Mr. Dykes and  
22 any of their entities would be barred by the first part of  
23 Section 11 -- sorry, Section 7.11 unless there's an  
24 exception.

25 Q. I don't want to interrupt you, but can I point your

1 attention -- so this is saying -- if I'm getting you right,  
2 this is saying you're not going to do these things, and then  
3 I see this word "except" --

4 A. Uh-huh.

5 Q. -- colon, and then we skip down where I've helpfully  
6 drawn an arrow for you, we skip down to subsection (f) here  
7 where it says, except you can do any distribution permitted  
8 by Section 7.12. Am I getting that correct?

9 A. Yes, you are.

10 Q. Can you explain to the jury the significance of what  
11 that says?

12 A. Well, a distribution from an LLC to an owner of the LLC,  
13 if both of them are defined as affiliates, would be barred by  
14 Section 7.11. So what this says is, a distribution permitted  
15 by Section 12 is permitted. Okay. In other words, it's one  
16 of the exceptions to the bar, so the contract says, so long  
17 as the distribution fits under 7.12, it's fine.

18 Q. Okay. Can I move on to Section 7.12 then?

19 A. Sure.

20 Q. Okay. Okay. And I've -- again, I've highlighted, for  
21 demonstrative purposes, Section 7.12 under Government's  
22 Exhibit 2. Talk to us about this paragraph or this provision  
23 (indicating), Mr. Snyder.

24 A. Okay.

25 **MR. COGDELL:** Turn it the other way, Nick. We're

1 getting seasick.

2 MR. NORRIS: Sorry.

3 A. All right. 7.12 is the section that was referred to in  
4 7.11 as an exception to the ban on transfers.

5 Q. (By Mr. Norris) Is this the section -- just to be  
6 clear, is this the Section 7.12 that we've been talking about  
7 throughout this trial?

8 A. Yes, it is. Well, we've talked about some of them, but,  
9 yes, this is one of them. This is one of the main sections  
10 that you've been talking about.

11 Q. Okay. And I see it says distributions.

12 A. Yes, it's called distributions.

13 Q. Walk us through the meaning of Section 7.12, in your  
14 professional opinion.

15 A. All right. Well, without lender's prior written  
16 consent, borrower will not -- and note this is -- this is the  
17 borrower. It doesn't -- it doesn't use the word  
18 "affiliates," so here we're only talking about members of the  
19 borrower group.

20 And the reason for that is that only the -- only LLCs  
21 and other kinds of business will make distributions, so  
22 they're very careful in using the correct language in these  
23 particular paragraphs.

24 So without lender's prior written consent, borrower will  
25 not, and will not permit any other borrower group member to,



1 declare, make, or pay any distributions, either in cash or  
2 any other property, or redeem, retire, repurchase, or  
3 otherwise acquire any of its equity interests, if a default  
4 or event of default exists or would exist therefrom.

5 So when you untangle the legalese, it says, if your  
6 distribution -- if the distribution, if the payment from the  
7 entity out to the members, if that would -- if the company's  
8 already in default, if the LLCs -- I'm sorry, if the  
9 borrower's already in default, then the distribution is not  
10 permitted.

11 And if the distribution itself would result in the LLC,  
12 the borrower not being able to do one of the other things  
13 it's supposed to do here under the agreement, under the other  
14 covenants, then it's improper.

15 But so long as there's no existing default and it would  
16 not itself trigger a default, then you're free to take the  
17 money -- take the money, you're free to make a distribution.  
18 Distributions -- I mean, distributions, of course, are just  
19 like -- they're like the dividends that shareholders get from  
20 companies. You know, shareholders get cash on a regular  
21 basis from the companies, and this is how owners take  
22 interest out of things like LLCs.

23 Q. So, based on your understanding of this contract and  
24 also your understanding of the evidence that you've heard so  
25 far, was there a default or an event of default in this

1 scenario?

2 A. None of the -- none of the testimony suggested to me  
3 that, under the terms of this agreement, there was a default  
4 in existence at the time the distribution was made, and  
5 nothing in the evidence suggested to me that it was the  
6 distribution rather than something else that caused the  
7 default on this particular contract.

8 So I guess the answer to that I think is no. No or yes,  
9 I forget how you phrased it, but --

10 Q. I phrased it as, from your understanding, was there a  
11 default or event of --

12 A. No.

13 Q. -- default? Okay.

14 Now, Professor Snyder, I'd like to shift gears a little  
15 bit and talk about working capital. So you've already  
16 testified that there's only -- it's only been mentioned one  
17 time in the loan agreement itself?

18 A. Uh-huh.

19 Q. And is it defined in the loan agreement?

20 A. In my view, it is defined because it is a financial term  
21 that's used in GAAP, and in my interpretation of the  
22 contract, I think that's what would be used.

23 I heard Mr. Hutchison offer a different view, which, in  
24 my view, is -- I hate to say somebody's -- something's  
25 erroneous or something is wrong or whatever, but I don't

1 think it's correct.

2 Q. Why don't you think it's correct?

3 A. Um, I have a very short mental train, so your question.  
4 What wasn't correct?

5 Q. Why do you think Mr. Hutchison's --

6 A. Oh, yes --

7 Q. -- interpretation of working capital --

8 A. -- Mr. Hutchison's interpretation of that. Yes. Um,  
9 first off, with the --

10 Um, could you bring it up again.

11 Q. Sure.

12 A. Would you bring up the default section.

13 Q. You think it would help if I displayed the actual  
14 definition --

15 A. Yeah, yeah.

16 Q. -- of working capital --

17 A. I'm trying to remember --

18 Q. -- supposedly?

19 A. You know, we kind of get hung up on the exact --

20 Q. Okay.

21 A. -- loans here.

22 Q. So I'm displaying for the record Government's Exhibit 2.

23 A. That's not it. That's not 2.01(b). The default  
24 provision is 8.01.

25 Q. I want you to help me out, Professor Snyder --

1 A. Okay. I'm sorry.

2 Q. -- with the --

3 A. I got momentarily --

4 Q. -- definition --

5 A. -- confused. Go ahead.

6 Q. Okay. Help me out with the definition of working  
7 capital, from your interpretation of the loan agreement.

8 A. Okay. Working capital -- so go to -- go to the  
9 definition section. There's so many definitions of it so far  
10 that I've gotten a little bit confused myself. I apologize.  
11 It's 8.01, you know, (g), (h), somewhere down there.

12 Q. Okay.

13 A. Oh, I may have it here. Government's Exhibit 2, I  
14 think.

15 Q. Yes, sir.

16 A. Oh, I'm sorry. Um, oh, it's -- it's terrible getting  
17 old. 1.02, I'm sorry.

18 Section 1.02, Construction. Note, the first part  
19 Section 1.02, the first part has a list of definitions. I  
20 think I counted some sixty things that are separately  
21 identified.

22 Q. Okay.

23 A. You get down to 1.02 --

24 Q. You want me to display it?

25 A. Oh, yes, please.

1 Q. Okay.

2 A. There's a reason why people hate lawyers. All right.  
3 Construction.

4 Q. Good.

5 A. All right. If we look at (g) -- okay, these are the  
6 rules that within the contract the parties say you should use  
7 in interpreting the contract. We've had that list of  
8 definitions.

9 And then when you get down to (g), it says, accounting  
10 and financial terms used by but not otherwise defined with  
11 respect to borrower's financial statements and financial  
12 position have the meanings provided under GAAP, which is the  
13 generally accepted accounting principles. And then there's  
14 the UCC term. But that says to me that we use GAAP.

15 Now, Mr. Hutchinson -- Hutchison, excuse me, Mr.  
16 Hutchison said that, in his view, that sentence means that  
17 only when the term -- the terms are used in the supporting  
18 documents, in the financial statements and things, do they  
19 carry the meaning in GAAP.

20 My problem with that is, if that's not the definition,  
21 then there is no definition in the contract of what has been  
22 said to be the most -- one of the single most important terms  
23 in the agreement, and then we're left with a term that is  
24 entirely ambiguous.

25 And as a transactional lawyer, you don't assume that the

1 parties have intentionally left an important term undefined.

2 So if there is an actual list of definitions, and it's  
3 in there, great. Then it falls under the backup provision,  
4 but you try to figure out what the parties meant by it.

5 And if the default is, we have no idea what they meant,  
6 then any one of the definitions used by anyone in this room  
7 might be the one that Mr. Reagor thought, or Mr. Dykes  
8 thought, or Mr. Smith thought, or the bank president thought,  
9 or the FBI agent thought. Any of those might be what they  
10 thought, and that leaves us in a situation where we have no  
11 idea.

12 So I think the interpretation that I am putting on that  
13 provision -- I know it sounds complicated, but I think it's  
14 the better approach, because it means that the parties at  
15 least thought about what working capital meant.

16 If that's not the definition, they didn't think about  
17 what working -- I'm sorry, I shouldn't say that they didn't  
18 think about. I would take from the document that the parties  
19 had no agreement on what working capital meant.

20 Q. So, if I'm getting this right, what you're saying is,  
21 there was either no agreement on what working capital  
22 meant --

23 A. Uh-huh.

24 Q. -- or essentially Mr. Hutchison's interpretation was  
25 wrong, and what the contract actually says is that the

1 definition of working capital is how we define it under GAAP?

2 A. Um, restate that. I followed you until the second part.

3 Q. So there's either no definition of working capital, or  
4 it's the definition under the generally accepted accounting  
5 principles GAAP?

6 A. Yes.

7 Q. Okay.

8 A. That's where we are.

9 Q. Okay.

10 A. And, again, when you're interpreting a contract, you try  
11 to find what evidence there is of what the parties probably  
12 meant.

13 And since working capital is a financial term, and it's  
14 used here, although not in the financial statements, as a  
15 financial term, I think that the GAAP definition, which is  
16 how much ready cash -- oh, sorry, how much ready cash and  
17 things you have minus how much you owe in the near future, I  
18 think that's the definition that I would use in interpreting  
19 this.

20 Q. Okay. Well, let's go -- let's go there to the  
21 accounting definition. So if we're using that accounting  
22 GAAP definition of working capital, what does it mean? How  
23 can that be used?

24 A. Um, well, it's not useful particularly because to the  
25 extent that it's important, there's so many -- the GAAP

1 definition simply says, okay, again, it's sort of what you  
2 have handy and readily turnable into cash minus what you're  
3 going to owe in the near future.

4 Both of those, in certain transactions, can be very  
5 important, and the working capital number that you get, um,  
6 can often be fought over.

7 I mean, I understood Mr. Hutchison to say that he hasn't  
8 run across situations in which there's a dispute over what  
9 working capital is, but those disputes are quite common in  
10 many situations, and in situations in which a definition of  
11 what counts as working capital is important, you tend -- I  
12 mean, lawyers fight over what is and isn't in there, and they  
13 battle over the terms.

14 So my assumption would be -- I shouldn't have said --  
15 never mind. Let me skip that.

16 Q. So let's break it down for a second.

17 A. Uh-huh.

18 Q. The GAAP definition is current assets less current  
19 liabilities --

20 A. Uh-huh.

21 Q. -- equals working capital?

22 A. Right. And that's the definition used on balance  
23 sheets. You know, any company that you look at online, you  
24 can find out what their current working capital is.

25 Q. But that definition -- sorry to cut you off. That



1 definition is effectively just a number on an accounting  
2 statement of some kind; is that fair to say?

3 A. Yes.

4 Q. And my question, I think, is: Once you have that  
5 number, that money under your interpretation of the  
6 agreement, what can you then do with it, or what could a  
7 borrower then do with it?

8 A. Oh, I'm sorry, yes. The working capital, once it comes  
9 into the company, is used for any of the purposes, any  
10 business purpose of the company.

11 And when I say "business purpose," paying the owners of  
12 the company for their investment is one of the recognized  
13 legitimate business purposes for using working capital. All  
14 distributions, any distribution like any other payment comes  
15 out of working capital.

16 Now, there are some other -- there are -- again, there  
17 are a number of uses -- let me be clear. There are a number  
18 of ways people use the term working capital. I've heard at  
19 least seven of them in this classroom, and none of them --  
20 classroom.

21 Q. In the courtroom?

22 A. In this courtroom.

23 Q. I got it.

24 A. I've heard about seven of them in this courtroom, and  
25 none --

1           **THE COURT:** Although, it's starting --

2       A.    -- of them are --

3           **THE COURT:** -- to feel like a classroom.

4       A.    -- wrong particularly because they're colloquial uses of  
5       the term.

6       Q.    **(By Mr. Norris)** Right.

7       A.    But they're all different. I mean, for example, if  
8       we're going to take -- well, no. You can ask me about --

9       Q.    Well, how about this, Professor Snyder. Let's --

10      A.    Sure.

11      Q.    -- just be very clear here. So can you use working  
12      capital to make a distribution to owners of a company?

13      A.    You necessarily use working capital to make  
14      distributions to a company --

15      Q.    Okay.

16      A.    -- because any payment out of cash lowers current assets  
17      and therefore affects working capital.

18           Now, I heard a definition, for example, that it's the  
19      money that you use on a day-to-day basis to run the business.  
20      Some people use that as a colloquial, but that's wrong,  
21      because it's also the money you use to buy a new division.  
22      It's the money that you use to make other investments. It's  
23      the money you make to upgrade your equipment. Anything  
24      that -- to rent a box at a Texas Tech football game, to  
25      entertain banking, right?

1 Q. All of those --

2 A. All of those --

3 Q. -- can be legitimate?

4 A. -- are business expenses, and working capital is used  
5 for any of them.

6 Now, if you don't use that definition, well, then you  
7 could say, well, my view of working capital is that it means  
8 what we call -- I'm blank on the term. There's a thing  
9 called permanent working capital -- all right -- which is the  
10 sort of base amount that you should always have on hand to  
11 make sure you can pay your bills. All right? That's just  
12 like what we call the cash cushion.

13 But the -- whether it goes above -- if it goes below  
14 that number, you may have a problem, but above it any of that  
15 money is free to use for whatever you want to do.

16 And it is -- large companies take out loans to pay  
17 dividends to their shareholders, and the money they receive  
18 goes into working capital, and then it gets sent out and  
19 deducted from working capital.

20 Q. Okay. Let's talk about an LLC situation because --

21 A. Uh-huh.

22 Q. -- that's the situation we have here; is that fair?

23 A. Sure.

24 Q. Okay. Now, did you also examine the operating agreement  
25 for D and R Acquisitions?

1 A. Yes, I did.

2 Q. And is it your understanding, based on your review of  
3 the loan agreement, that D and R Acquisitions was the  
4 borrower here?

5 A. Maybe -- should I explain what an operating agreement  
6 is?

7 Q. If we can do it briefly.

8 A. Oh, yeah, it's briefly, but an operating agreement is  
9 like the articles of incorporation of a corporation. It's  
10 the document that sets up the structure of the limited  
11 liability company and governs who owns it.

12 So, yes, it's a 50-percent ownership between Mr. Reagor  
13 and Mr. Dykes.

14 Q. Okay. So, to be clear, D and R, LLC is the borrower,  
15 but D and R, LLC really is Bart Reagor and Rick Dykes; am I  
16 getting that right?

17 A. Yes. In a -- in a practical sense, that's exactly  
18 right.

19 Q. Let's talk practically for now.

20 A. Okay. Sure.

21 Q. Okay. Now, are you saying that a distribution to two  
22 co-owners of an LLC was a legitimate use of the working  
23 capital under this loan agreement, according to your  
24 interpretation?

25 A. Yes. It's one of the standard recognized things that

1 you use working capital for. Working capital in what I think  
2 is the contract definition.

3 Again, if you want to use a different -- something  
4 that's not mentioned in here as a term, then we might argue  
5 about whether it is or isn't, but certainly under this  
6 contract and under 99 percent of the cases and situations,  
7 yes, it's what you do. It's the only way you can pay it.

8 Q. Okay.

9 A. It's the only way to pay distributions is out of working  
10 capital.

11 Q. I want to go back to 7.12 just one time. Okay?  
12 Distributions. So, to be clear, do you see anything in that  
13 Section 7.12 that prevents that distribution to the members  
14 of D and R Acquisitions, LLC?

15 A. No. This is specific consent -- I'm sorry, dropping  
16 into my lecture voice, I'm sorry. This is consent by the  
17 lender to distributions to the owners so long as they meet  
18 those two requirements.

19 If they don't meet the two requirements, which is if a  
20 default or event of default exists or it would result, then  
21 it's not proper. If we don't have that — and I've heard no  
22 evidence that that's the case — then this is in my view  
23 specific consent on the part of the bank to make those  
24 distributions.

25 **MR. NORRIS:** Professor Snyder, I appreciate your

1 time. Let me go ahead and pass the witness.

2 THE COURT: Cross-examination, Mr. Haag?

3 MR. HAAG: Thank you, Your Honor.

4 THE COURT: And, again, because there are a lot of  
5 documents and clauses and sections flying around, just start  
6 by identifying the exhibit, and then we'll be able to protect  
7 the record that way. You may proceed.

8 CROSS-EXAMINATION

9 BY MR. HAAG:

10 Q. Good afternoon, Professor Snyder.

11 A. Good afternoon.

12 Q. How are you doing today?

13 A. I'm very well. Thank you.

14 Q. All right. We're going to talk a little bit about just  
15 a few things. Mr. Norris took --

16 MR. COGDELL: Your Honor, can I move so I can see  
17 this?

18 THE COURT: Oh, yeah. Let's -- is there a better  
19 way to reorient that so that Defense Counsel --

20 MR. COGDELL: I don't mind standing over here as  
21 long as I don't get in the box.

22 THE COURT: Okay. You and the case agent can sit  
23 next to each other.

24 Q. (By Mr. Haag) All right. Let's clear up just a few  
25 things, and this is going to be very short, I promise you.

1           **THE COURT:** Very, very briefly, Mr. Haag. Who will  
2 be making objections? I assume Mr. Norris still has the  
3 witness.

4           **MR. COGDELL:** Yes.

5           **THE COURT:** Okay. So you being outside of range of  
6 the microphone is not a problem, so are you miked up, Mr.  
7 Norris?

8           **MR. NORRIS:** I am, Your Honor.

9           **THE COURT:** Okay. All right. You made proceed,  
10 Mr. Haag.

11 Q.   **(By Mr. Haag)** All right. Mr. Norris talked to you a  
12 bit about D and R Acquisitions as an LLC; is that correct?

13 A.   Yes, sir.

14 Q.   That LLC is comprised of two partners, correct?

15 A.   The term is not partners. The term is members, but they  
16 are functionally like partners, yes.

17 Q.   All right. So an LLC has two members. Do you have to  
18 keep the LLC separate from the two members?

19 A.   No.

20 Q.   You don't?

21 A.   No. Incorporation, you must keep the corporate accounts  
22 separate from the accounts of the individual shareholders.

23           LLCs are extremely flexible in that commingling of funds  
24 among the owners and the entity are fine. And, if you're  
25 about to ask why, it's because the owners pay tax on the

1 income whether it goes in their personal account or whether  
2 it goes into the company account. So if they put money into  
3 the business or take money out of the business, there's no  
4 requirement that it be kept separate because the tax will be  
5 exactly the same.

6 And so one of the -- in fact, the Texas Supreme Court in  
7 a --

8 Q. Well, let me stop you --

9 A. I'm sorry.

10 Q. -- there before we get too far down this rabbit trail.  
11 Is it advisable to keep an LLC's business separate from that  
12 of its owners for liability purposes?

13 A. For liability purposes, yes.

14 Q. Because it --

15 A. I'm sorry, can I rethink that? Can you --

16 Q. I'm not trying to trick you, I promise.

17 A. No, I know you're not trying to trick me. I'm trying to  
18 explain this in a way that doesn't confuse me.

19 Q. Let me just say it this way.

20 A. Okay.

21 Q. Is it advisable to keep the LLC separate from the  
22 partners because, if there's too close a connection between  
23 them, someone that sues the LLC can pierce the corporate veil  
24 and go directly after its members?

25 A. No, I don't think that's correct.



1 Q. All right. What about taxation?

2 A. No, no. What you're talking about is something called  
3 piercing the corporate veil; is that --

4 Q. Yes.

5 A. -- the idea? Okay. Am I losing you?

6 Q. Well, let's just go on, but let's --

7 A. I might be able to --

8 Q. In general, let me ask it this way.

9 A. Sure.

10 Q. In practice, do most LLCs keep their businesses separate  
11 from their personal? In other words, does the LLC and its  
12 members all have just the same bank account that they pay out  
13 of, or do they keep it separate?

14 A. I don't know the numbers, but a very significant number  
15 of LLCs use the personal bank accounts of the owners because  
16 the taxation is the same, and it's quite convenient.

17 Larger LLCs will separately keep, for a variety of  
18 purposes, separate accounts, but I think what you're  
19 asking -- I don't want to try to --

20 Q. Well, and, Professor Snyder, I just went off of what I  
21 read on Bank of America's website when they were talking  
22 about the advisability of LLCs having separate from their  
23 members, because, number one, liability purposes and taxation  
24 purposes because you can track expenses.

25 A. Oh, okay. All right. Let me -- let me clarify that.

1 Q. And, again, we're going down a rabbit trail. I don't  
2 want to go down it.

3 A. No, no, I know, but it depends on the state you're in.  
4 In some states in the union, Texas -- commingling of personal  
5 and corporate assets can result in something called piercing  
6 the corporate veil, which allows creditors to ignore the  
7 corporation, ignore the LLC and come and take all of your  
8 money.

9 Texas does not have that doctrine. In fact, Texas,  
10 almost unique among the states, has a very different  
11 doctrine, and the doctrine says, as long as you have not used  
12 the LLC to commit actual fraud — actual fraud means a  
13 knowing lie that you made money off of, and I know that your  
14 claim is that there was fraud here — but except for that,  
15 you don't take that into account. The LLC provides you with  
16 the same liability.

17 Q. Okay. Fair enough.

18 A. All right.

19 Q. Let's go on to the relevant portions. All right. When  
20 were you hired on this case?

21 A. A couple of weeks ago. I think it was the day after the  
22 Government designated an expert, so whatever day that was, I  
23 got a telephone call.

24 Q. So if today is October 13th, so ballpark?

25 A. Oh, I don't know. Has it been a month? I --

1 Q. Thirty days, fourteen to thirty days?

2 A. I would -- I would say probably about three weeks. I  
3 mean, I would just have to look at the date.

4 Q. Okay.

5 A. But it's not been very long, no. There was no expert  
6 contemplated, I think, until the Government designated one,  
7 and then I got a telephone call.

8 Q. All right. How much are you being paid for your  
9 testimony?

10 A. I'm paid -- being paid \$600 an hour. Is that what we  
11 agreed? 600. Yeah.

12 Q. How much have you billed so far?

13 A. None.

14 Q. Okay. Ballpark, how many hours have you spent?

15 A. If you'd let me have my iPad, I could tell you exactly.  
16 I would say probably twenty-four at this point.

17 Q. Okay. There's a difference between fraud and breach of  
18 contract, isn't there?

19 A. Yes, sir.

20 Q. What is the additional requirement for fraud, or not  
21 even additional, how is fraud different from breach of  
22 contract?

23 A. Are you talking about criminal fraud or civil fraud?

24 Q. Criminal.

25 A. I would really -- well, fraud, in general, means an

1 intentionally false statement made to another knowing that it  
2 was false, knowing that the other party would rely on it, and  
3 getting money on behalf -- as a result, yes. I think that's  
4 what I recall from a while back.

5 Q. All right.

6 A. And, again -- and if that's different from what the jury  
7 instruction is going to say fraud is, I apologize.

8 Q. No, sir. Would it be fair to say that it requires some  
9 sort of false statement or material omission and an intent to  
10 deceive?

11 A. I'm not an expert in fraud, but I'm happy to state --

12 Q. In general terms?

13 A. Yes, in general, yeah.

14 Q. Okay. Breach of contract, does it require a false  
15 statement?

16 A. I didn't quite catch that, I'm sorry.

17 Q. Does breach of contract require a false statement?

18 A. No. It's strict liability.

19 Q. Does intent -- does it require an intent to deceive?

20 A. No, it does not.

21 Q. All right. We're going to talk about the relevant dates  
22 here. Did you provide any advice to the defendant on  
23 May 31st, 2017?

24 A. No, I did not.

25 Q. Did you provide any advice to the defendant on July 13th

1 of 2017?

2 A. I did not.

3 Q. Did you provide any advice to the defendant on  
4 February 28th of 2018?

5 A. No. I never provided any advice to the defendant.

6 MR. HAAG: No further questions.

7 THE COURT: And, Mr. Haag, if we could move that to  
8 reorient the lines of sight here.

9 Redirect, Mr. Norris?

10 REDIRECT EXAMINATION

11 BY MR. NORRIS

12 Q. Let's pick up where Mr. Haag left off. Knowing what you  
13 know now, reviewing the contracts, listening to all of the  
14 evidence, if you had provided advice to the defendant about  
15 taking a distribution in accordance with what we've been  
16 discussing, what would the advice have been?

17 A. I would say you're fine. Under that agreement and with  
18 the facts that I've heard so far, I would say it's your  
19 decision. I'm sorry, it's yours and Mr. Dykes' decision. It  
20 would have to be a joint decision to make a distribution, but  
21 yes.

22 MR. NORRIS: Thank you, Professor Snyder. Nothing  
23 further.

24 THE COURT: Recross by the Government?

25 MR. HAAG: No questions, Your Honor.

1           **THE COURT:** Okay. And the Defendant -- does the --  
2           is the Defendant content to excuse the witness at this time  
3           subject to recall?

4           **MR. NORRIS:** We're good with excusing him, Your  
5           Honor.

6           **THE COURT:** Okay. Does the Government object to  
7           this witness being excused, understanding that he is -- he  
8           has been omitted from the rule and may remain present in the  
9           gallery? Is the Government okay to excuse the witness with  
10          that understanding?

11          **MR. HAAG:** Yes, Your Honor.

12          **THE COURT:** Professor Snyder, you may return to the  
13          gallery. You are excused.

14          **THE WITNESS:** Thank you, Your Honor.

15          **(Witness leaves the stand.)**

16          **THE COURT:** And the Defendant may call his next  
17          witness.

18          **MR. NORRIS:** I don't have my mike, Your Honor, but  
19          we call Steven Fried.

20          **THE COURT:** Okay. Mr. Fried, you may approach the  
21          witness chair. Please remain standing for the administration  
22          of the oath. And you may remove your mask for purposes of  
23          testimony and the oath if you feel comfortable doing so.  
24          Please raise your right hand.

25          **(The witness was sworn by the courtroom deputy.)**

1           **THE COURT:** Please be seated, and please be careful  
2 to speak directly into the microphone, and you may pull the  
3 microphone closer, if necessary.

4           Mr. Norris, you may begin.

5           **MR. NORRIS:** I'm sorry, Your Honor, I don't know  
6 why I took this mike off. That was foolish of me.

7           **THE COURT:** Well, everybody was moving about in  
8 this last episode, so it's understandable.

9           You may proceed either from the podium or with that  
10 microphone.

11           **MR. NORRIS:** Thank you.

12                           **STEVEN FRIED,**  
13           having been first duly sworn, testified as follows:

14                           **DIRECT EXAMINATION**

15           **BY MR. NORRIS:**

16           Q. Mr. Fried, can you state your name for the record,  
17 please.

18           A. Steven Fried.

19           Q. Now, briefly, Mr. Fried, what is your background?

20           A. Where do you want me to start?

21           Q. How many years did you spend in the banking industry,  
22 sir?

23           A. Thirty-three.

24           Q. And, again, I guess briefly an overview of the positions  
25 that you've held.

1 A. I'm sorry, an overview of --

2 Q. The positions you've held.

3 A. Oh, I started in 1968 with a company called the Bankers  
4 Trust Company at 16 Wall Street. I worked there for  
5 approximately seven years.

6 Then I moved to Union Bank of Los Angeles. I worked for  
7 Union Bank as a vice president and team leader, let's see,  
8 for about -- about five years.

9 Following Union Bank, I went into independent banking as  
10 sort of a turnaround specialist for banks that were in  
11 trouble, and I worked for — I don't remember the exact  
12 number right off the top of my head — but probably about  
13 five banks between 1979 and 2000, and that's plus or minus my  
14 banking experience.

15 Q. Okay. So, to be clear, you've worked for banks?

16 A. Yes.

17 Q. Okay. Now, did you -- were you also -- like Professor  
18 Snyder, were you also in the room for all of the Government  
19 witnesses' testimony?

20 A. Yeah, I've been here for the full trial.

21 Q. So that would include Mr. Thomas Hutchison's testimony?

22 A. Yes.

23 Q. Would that also include Mr. Bill Schonacher's testimony,  
24 the president of the bank?

25 A. Yes.



1 Q. And then what about William Woodring's testimony?

2 A. Yes.

3 Q. Now, is it true, Mr. Fried, that in these working  
4 capital loan situations, are there a lot of ways for a bank  
5 to protect itself in these agreements in these negotiations?

6 A. Sure.

7 Q. Now, you've also reviewed the -- have you also reviewed  
8 the loan agreement that we've been talking about?

9 A. I have.

10 Q. So just give us a general overview. Based on your  
11 professional banking experience, what could this bank, IBC,  
12 have done to essentially protect themselves or limit the uses  
13 of this working capital if they were so concerned about that?

14 MR. HAAG: Objection, Your Honor, calls for a legal  
15 conclusion as to the drafting of the contract.

16 THE COURT: Okay. Sustained. This is not the  
17 witness who was designated for purposes of contract  
18 construction or expert in contracts. But if you want to  
19 limit your questioning to his banking expertise, you may do  
20 so.

21 MR. NORRIS: Your Honor, if I may, it is -- he is  
22 going to speak purely from the perspective of his experience  
23 in actually seeing these contracts.

24 THE COURT: If you --

25 MR. NORRIS: I'm happy to --

1           **THE COURT:** If you reformulate the question in a  
2 more general form --

3           **MR. NORRIS:** Sure.

4           **THE COURT:** -- not specific to the legal counsel  
5 that he might have provided defendant, but what do banks do  
6 in his experience to protect working capital.

7           **MR. NORRIS:** Certainly, Your Honor, I apologize.

8           **Q. (By Mr. Norris)** So, Mr. Fried, in your experience --  
9 well, let me back up. Have you seen working capital loans  
10 get negotiated in your professional banking experience?

11           **A.** Well, that's most of what I did for thirty-three years,  
12 was working capital loans.

13           **Q.** So a lot of them?

14           **A.** A lot.

15           **Q.** Okay. In your experience, what did you see banks do to  
16 protect themselves in this working capital loan situation?

17           **A.** Well, you -- normally, if the loan is anything longer  
18 than a very short-term loan, the bank will require financial  
19 statements, which they did in this case, on an annual basis,  
20 on an interim basis, maybe once a quarter; sometimes they  
21 even require it once a month.

22           And if it's anything more than a short-term loan, they  
23 will put together some sort of a loan agreement. The loan  
24 agreement, as Professor Snyder pointed out, has affirmative  
25 and negative covenants. Okay. And two of the covenants that

1 did --

2 **MR. HAAG:** Your Honor, I apologize for objecting,  
3 but, again, we are drifting into contract interpretation,  
4 which this expert is supposed to be an economist and express  
5 opinions on financial matters.

6 **MR. NORRIS:** Your Honor, no one claimed that he was  
7 an economist. He's a banking expert basing his experience  
8 off of, it sounds like, hundreds potentially of these loan  
9 negotiations and what he saw based on his experience.

10 **THE COURT:** I will allow this line of questioning,  
11 and just steer clear of any contract construction.

12 You, of course, can recall your expert on  
13 contracts, but the witness is instructed to limit his  
14 testimony to what was designated in the expert designations,  
15 his report and any material that he relied upon in generating  
16 his expert opinion. You may proceed.

17 Q. **(By Mr. Norris)** So, Mr. Fried, let's back up. In your  
18 personal experience, what kinds of things can a bank do to  
19 protect itself in a loan agreement?

20 A. There are two that I thought were pretty important that  
21 were not included in the loan agreement.

22 There's a covenant called the debt-to-net-worth ratio,  
23 and just to explain that in very simple terms, if my net  
24 worth is a dollar, and I owe \$5 to creditors, I have a debt-  
25 to-net-worth ratio of five. If the bank didn't want me to

1     become that leveraged, all they had to do was put in a  
2     covenant that says, the debt-to-net-worth ratio will not  
3     exceed, fill in the blank, whatever number they're talking  
4     about. That wasn't in the agreement.

5           Even more on point is, the same kind of a covenant with  
6     respect to working capital. They could have put in a ratio  
7     in the loan agreement that says, working capital will not go  
8     below a certain dollar amount or will not go below a certain  
9     percentage or a ratio, and that wasn't in the agreement  
10    either.

11           Those two things probably would have protected the bank  
12    completely, but they weren't in the loan agreement.

13           **(Defense Attorneys' sotto-voce conference.)**

14    Q.   **(By Mr. Norris)** So, Mr. Fried, you listened to  
15    Professor Snyder's testimony. Are you in agreement  
16    ultimately that using this working capital money under this  
17    loan agreement as a distribution was consistent with what the  
18    bank put into this loan agreement?

19    A.   Yeah. And I think maybe the perfect example is what Mr.  
20    Dawson had to say earlier. If you have cash in the bank of  
21    \$500, and you've got a current liability of -- for an  
22    electric bill of \$200, the working capital is \$300.

23           On the day that the bank deposited the proceeds of the  
24    first or the second loan, on the day they deposited that, it  
25    went into the company's cash account. By definition, it went

1 into working capital.

2 Q. And, by definition, once it goes into their account and  
3 is working capital, are you saying that they're then free to  
4 use it in this way as a distribution?

5 A. In my experience, bankers, when they make a loan for  
6 so-called working capital, it's used at the discretion of the  
7 company's management. Whatever the company decides to do  
8 with that money, that's part of work -- it's an adjustment on  
9 working capital.

10 And if they had had those two other provisions in there,  
11 they might have been precluded from doing that, but they  
12 didn't have those two provisions. So, in my opinion, it's  
13 purely at the discretion of management.

14 Q. And, in this case, the discretion of management was to  
15 take this as a distribution, or, excuse me, to take part of  
16 it as a distribution. In your opinion, is that an acceptable  
17 or legitimate use of the money?

18 A. Yes.

19 THE COURT: Mr. Haag, are you taking  
20 cross-examination?

21 MR. HAAG: Yes, Your Honor.

22 MR. NORRIS: I'm sorry, Your Honor. I pass the  
23 witness.

24 THE COURT: Okay. You may approach.

25 MR. HAAG: Thank you, Your Honor.

**CROSS-EXAMINATION**

**BY MR. HAAG:**

Q. Mr. Fried, I have just a few questions. When did you get hired in this case?

A. About three weeks ago.

Q. How much are you being paid?

A. \$500 per hour.

Q. How many hours have you put into this case?

A. About twenty-five.

Q. How much have you billed out so far?

A. None.

Q. Are you going to bill out at the end of the case?

A. Yes.

Q. All right. The way I understand your testimony — and correct me if I'm wrong — but once the loan proceeds for working capital went to the business account, it's your testimony that the business can do whatever it wants with it?

A. Well, except for the loan agreement, if it's prohibited by the loan agreement, other than that, they can do whatever they want.

Q. Okay. Could they take the \$10,000,000 and go to Las Vegas and gamble it?

A. I imagine they could, yes.

**MR. HAAG:** No further questions.

**THE COURT:** Redirect by the Defense? And limit it

1 to subjects discussed on cross.

2 **REDIRECT EXAMINATION**

3 **BY MR. NORRIS:**

4 Q. Mr. Fried, let's pick back up where the Government left  
5 off. So, staying with that hypothetical, is that, in fact,  
6 what happened in this case; the owners took the money, the  
7 proceeds to Las Vegas and gambled with it?

8 A. Absolutely not.

9 Q. Now, again, staying with Mr. Haag's example, had they  
10 taken a distribution and gone to Las Vegas and gambled with  
11 the money, as long as they paid back the loan on time, in  
12 your professional experience, would there ever have been any  
13 issue with the bank?

14 A. Well, as long as there's no default and they're paying  
15 on time, it's not a problem.

16 Q. And is it also your opinion that once those  
17 distributions -- or, excuse me, once the loan proceeds go  
18 into the working -- into the company's account, and then they  
19 come out as distributions, what are they then?

20 A. Well, I mean, subject to whatever Professor Snyder said  
21 about, you know, commingling of assets, my -- my professional  
22 experience, once they take the distributions, that's Mr.  
23 Reagor's money; he can do what he wants with it.

24 Q. So, in other words, at that point, as long as he took  
25 the distribution lawfully under the loan agreement and

1 consistent with what Professor Snyder said, whatever Mr.  
2 Reagor did with the money after that really isn't relevant?

3 A. Yes.

4 MR. NORRIS: Thank you, Mr. Fried.

5 THE COURT: Recross, Mr. Haag?

6 MR. HAAG: No, Your Honor.

7 THE COURT: Okay. Mr. Norris, may this witness be  
8 excused subject to recall and understanding that he is exempt  
9 from the rule by agreement of the parties?

10 MR. NORRIS: Yes, Your Honor.

11 THE COURT: Okay. And, Mr. Fried, you may step  
12 down. You may remain in the gallery. The parties have  
13 agreed to exempt you from the rule.

14 (Witness leaves the stand.)

15 THE COURT: And the Defendant may call his next  
16 witness.

17 MR. POWELL: Your Honor, given the Court's previous  
18 ruling, may we have just a couple of minutes to discuss where  
19 we want to go from here?

20 THE COURT: Okay. Absolutely. It is now 2:21.  
21 Should we just dismiss until 3:00 -- I mean, I'm sorry, 2:30?  
22 I'm not going to give you that much time.

23 MR. POWELL: That would be plenty of time, Your  
24 Honor.

25 THE COURT: To 2:30. That will allow both sides to



1 get organized for the next line of witnesses. It will allow  
2 for a refreshment break.

3 Court stands in recess until 2:30. The parties are  
4 instructed to reappear at that time.

5 COURT SECURITY OFFICER: All rise.

6 (Recess taken; after which, the following took place in  
7 open court with the defendant but without the jury present.)

8 THE COURT: Please be seated. And, before we bring  
9 in the jury, I wanted to give the Defense an opportunity to  
10 reassemble and reorganize. Do you have a better idea of your  
11 itinerary from this point forward?

12 MR. POWELL: We do, Your Honor.

13 THE COURT: Okay. We'll call in the jury at this  
14 time.

15 COURT SECURITY OFFICER: All rise for the jury.

16 (The jury returned to the courtroom.)

17 THE COURT: You may be seated. And, Mr. Powell,  
18 you may call your next witness.

19 MR. POWELL: Thank you, Your Honor. We call  
20 Charles Darter.

21 THE COURT: Mr. Darter, you may approach the  
22 witness chair. Please remain standing for administration of  
23 the oath.

24 MR. POWELL: He's still outside, Your Honor. Sorry  
25 about that.

1 THE COURT: I guess I could say it louder.

2 (Laughter.)

3 MR. POWELL: I've never been accused of not doing  
4 that, Your Honor.

5 THE COURT: Mr. Darter, please remain standing near  
6 the witness chair for the administration of the oath, and my  
7 courtroom deputy will do that at this time.

8 (The witness was sworn by the courtroom deputy.)

9 THE COURT: You may be seated, and I'll just  
10 admonish you to speak clearly into the microphone. If you  
11 need to pull anything closer, you may do so.

12 And, Mr. Powell, you may proceed.

13 MR. POWELL: Thank you, Your Honor.

14 CHARLES DARTER,

15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. POWELL:

18 Q. Sir, would you please introduce yourself to the jury.

19 A. My name is Charles Darter. I'm a CPA from Lubbock,  
20 Texas.

21 Q. Okay. You said you live in Lubbock. How long have you  
22 lived in Lubbock?

23 A. Since 1979.

24 Q. Okay. I want to get right into it, why you're here  
25 today. Do you know Bart Reagor?

1 A. Yes, sir.

2 Q. How do you know Bart?

3 A. I've been Bart's CPA for -- since Bart was a senior in  
4 college.

5 Q. Okay. There at Tech?

6 A. Yes.

7 Q. All right. And so you've done his personal taxes since,  
8 I guess, he was about 20, 21, 22 years old?

9 A. Yes, sir.

10 Q. I want to talk to you about a couple of different things  
11 regarding that. What's been your impression as far as Bart's  
12 financial prowess, for lack of a better word?

13 A. Bart is an excellent car salesman, financial prowess on  
14 putting car deals together, he does really well. As far as  
15 being an expert in reading financial statements and doing  
16 numbers, okay, but not great.

17 Q. Okay. How about documents; does he rely on you to do  
18 his taxes and trust you in order to do those?

19 A. Yes.

20 Q. And that's for him and his wife and his family; is that  
21 correct?

22 A. That is correct.

23 Q. Does he -- has it been your experience that he usually  
24 reads those documents, or you just get him to sign, or how  
25 does that work?

1 A. We will usually go through the documents and show them  
2 to him, and then he signs them and moves on down the road.

3 Q. So the key factor is, he trusts you to take care of  
4 them?

5 A. Correct.

6 Q. Your personal observations as far as his business is  
7 concerned, have you seen and been a part of the Reagor-Dykes  
8 Auto Group as it's come from its inception to where it was  
9 when it was dissolved?

10 A. Yes, sir.

11 Q. Did you even take part of some of the organization of  
12 the companies that were involved in that?

13 A. Yes, sir. We helped him structure the businesses in the  
14 format that they ended up being.

15 THE COURT: And I'll instruct the witness just to  
16 be a little bit louder in projecting your voice and --

17 THE WITNESS: Okay.

18 THE COURT: -- also using the microphone.

19 THE WITNESS: Sure.

20 THE COURT: I have the same problem, so --

21 MR. POWELL: Thank you, Your Honor.

22 Q. (By Mr. Powell) Mr. Darter, you're kind of soft-spoken,  
23 so can I get you to keep your voice up. Okay?

24 A. Okay.

25 Q. I want to talk to you about a couple of different things

1 as far as the Reagor-Dykes Auto Group is concerned.

2 Way back when, in 2013, 2014, was there some discussion  
3 about the capital needed in the Reagor-Dykes Auto Group?

4 A. Yes, sir. We had several meetings with Bart and Shane  
5 Smith, and Rick Dykes was a part of at least one of them that  
6 I know of.

7 Q. Okay. And I don't want to talk to you -- I don't want  
8 you to say what anybody said or anything like that. But what  
9 was the general purpose of having those meetings?

10 A. Basically as the organization was growing, the business  
11 needed to retain additional capital inside there to make it  
12 financially healthy.

13 Q. Okay. And you've already stated that you were a part of  
14 the inception of Reagor-Dykes Auto Group. Was it your  
15 understanding that Bart Reagor and Rick Dykes were 50-percent  
16 owners of that -- of that company?

17 A. Correct.

18 Q. And were they taking monies from the company every  
19 month?

20 A. They took a distribution out from the company each month  
21 out of a portion of the profits.

22 Q. Okay. Which is certainly their right to do?

23 A. Uh-huh.

24 Q. And I need you to say yes or --

25 A. Yes, sir.

1 Q. -- no on that.

2 And so were they -- were they taking a certain amount of  
3 percentage as far as the profits were concerned, to your  
4 knowledge?

5 A. If I recall correctly, they were taking a 40 percent of  
6 the profits that came out on a monthly basis.

7 Q. And was the purpose of this meeting to maybe lower that  
8 amount that they were taking from the company every -- every  
9 month?

10 A. We had the meeting, yes. We discussed the need to  
11 reduce the amount of the -- the percentage of capital that  
12 was being withdrawn on the profits on a monthly basis.

13 At the last meeting we had, they agreed to do that, and  
14 they did reduce the amount they were drawing.

15 Q. Okay. And what did they reduce the amount to, if you  
16 recall?

17 A. If I recall, it was 30 percent.

18 Q. Okay. So they seemed to understand what the need was to  
19 put some more capital into the business and do that; is that  
20 correct?

21 A. That is correct.

22 Q. And did that continue? Was that their practice? I  
23 mean, you did his taxes. Was that their practice, or Bart's  
24 practice throughout that time until 2017, 2018?

25 A. Yes, sir.

1 Q. I want to talk to you about some of these events that  
2 took place.

3 And, Mr. Darter, I think I know the answer to this  
4 question, but I'll ask it anyway since you're his guy that  
5 prepares his taxes. Did Mr. Reagor pay his taxes and have  
6 any issues regarding any of those times during those years  
7 that you've known him?

8 A. No. Always paid his taxes on a timely basis in full.

9 Q. With whatever profits he was taking out of the company?

10 A. Yes, sir.

11 Q. The same thing with this distribution that was taken  
12 there, there was taxes paid on that; is that correct?

13 A. Well, on a partnership, you pay taxes on the profits on  
14 it regardless of whether you take it out of the business or  
15 not, so he was paying -- paying it on the total profits of  
16 what the business were.

17 Q. So every time?

18 A. Uh-huh.

19 Q. I need you to say yes or no.

20 A. Yes, sir.

21 Q. I'm sorry.

22 A. Yes, sir.

23 Q. In this part of the world, we shake our head and say  
24 uh-huh and all that, but you have to say yes or no, so we can  
25 get it down. Okay?

1 A. Got it.

2 Q. When you first heard -- and we've called -- it's been  
3 called an implosion. It's been called several different  
4 things that there were some issues involving a bad audit in  
5 2017 at the Reagor-Dykes Auto Group. Are you aware of that?

6 A. Yes, sir.

7 Q. And did you -- how did you hear about that, or how did  
8 you learn of that?

9 A. Shane contacted me. Shane Smith contacted me and said:  
10 Hey, we've had a bad audit. We need to raise some capital.  
11 We need to talk with Bart and Rick about getting some  
12 additional money into the business.

13 Q. Okay. Did he tell you why that had happened?

14 A. He said they had a bad audit and had some employees that  
15 were not doing things in a timely fashion.

16 Q. Certainly didn't disclose to you all the things that  
17 have subsequently came out --

18 A. No, sir.

19 Q. -- about what happened?

20 A. No.

21 Q. Did Mr. Smith make some type of comment to you about  
22 going to the dark side?

23 A. On the --

24 MR. HAAG: Objection, Your Honor, calls for  
25 hearsay.



1           **MR. POWELL:** Your Honor, we would say that it's an  
2 exception to the hearsay, his state of mind at the time that  
3 he did it and a statement against interest. We would say  
4 it's an exception to the hearsay rule.

5           **THE COURT:** I'm going to sustain it. You might  
6 find another way to ask the question, but it's sustained at  
7 this point.

8           **MR. POWELL:** Yes, sir.

9           **Q. (By Mr. Powell)** Did -- without going specifically into  
10 what Mr. Smith said, did he take some responsibility for what  
11 had gone on?

12           **A.** Yes, sir. I met with him the Monday following the  
13 implosion on Friday, and I asked him what happened, and he  
14 said --

15           **Q.** I don't want you to say what he said, but did he  
16 take responsibility --

17           **A.** He took --

18           **Q.** -- for what had happened?

19           **A.** -- responsibility for it, said that Bart --

20           **MR. HAAG:** Your Honor, objection.

21           **MR. FRAUSTO:** Objection.

22           **MR. POWELL:** Hold on. Okay.

23           **MR. HAAG:** Double objection, Your Honor.

24           **THE COURT:** Okay. It's just -- I'll -- and we're  
25 trying to move efficiently.

1                   **MR. POWELL:** Yes, sir.

2                   **THE COURT:** The attorneys in this case have worked  
3 extremely hard to be efficient with the court resources and  
4 the jury's time.

5                   Let's slow down. If there's an objection, you'll  
6 usually see it when an attorney rises. Please give me time  
7 to hear both sides of that objection to make a ruling, and  
8 then I'll instruct you, if necessary, to not answer.

9                   So, at this point, the Government's standing  
10 objection to hearsay statements in this category is  
11 sustained.

12                   I'll instruct you to follow that instruction, to  
13 not answer that question, but I'll allow you to reformulate,  
14 Mr. Powell.

15                   **MR. POWELL:** Yes, sir. Thank you, Your Honor.

16 Q.   **(By Mr. Powell)** Mr. Darter, how many times have you  
17 ever had to testify?

18 A.   Six times.

19 Q.   Six times?

20 A.   Yes, sir.

21 Q.   All right. You're not used to doing this very often,  
22 are you?

23 A.   Not very often.

24 Q.   Okay. Listen to my specific question if you would.  
25 Okay?

1 A. Okay.

2 Q. Without going into what anybody said, you stated that,  
3 we'll call it this implosion, all of the bad things that took  
4 place as the result of Mr. Smith took place on a Friday; is  
5 that correct?

6 A. That is correct.

7 Q. And you spoke to him the following Monday?

8 A. Yes, sir.

9 Q. Without -- again, without going into anything he said,  
10 did he take responsibility for what had happened?

11 A. Yes, sir.

12 Q. Did he also, again, without going into what he said,  
13 ever implicate Bart Reagor or Rick Dykes in what had  
14 happened?

15 A. No, sir.

16 Q. Just the opposite? Just the opposite?

17 A. Yes, sir, just the opposite.

18 Q. The last couple of questions, Mr. Darter. Based on this  
19 audit that had taken place, did -- what did Mr. Reagor do in  
20 response to that?

21 A. On the first audit where it was bad, he and Mr. Dykes  
22 injected capital into the business.

23 Q. Okay. Was that their personal -- their personal --

24 A. Yes, sir.

25 Q. -- finances?

1 A. Yes, sir.

2 Q. Okay. So they -- when you say they injected money into  
3 the business, what do you mean?

4 A. They pulled money out of the personal bank accounts and  
5 put it into the company's bank accounts.

6 Q. We talked a little bit -- and this is the last question  
7 I have for you. We talked a little bit about Mr. Reagor  
8 relying upon you to take care of his taxes, take care of his  
9 finances, and those things on his personal level.

10 Was it your experience that Bart's habit, his custom,  
11 his practice, whatever you want to call it, was to delegate  
12 the financial parts of Reagor-Dykes Auto Group to Shane Smith?

13 A. One hundred percent.

14 Q. And that's based on your personal observations?

15 A. Yes, sir.

16 MR. POWELL: All right. Thank you, Your Honor. I  
17 pass the witness.

18 THE COURT: Cross-examination by the Government?

19 Mr. Frausto, you may approach, and, as always,  
20 please limit your cross-examination to anything that was  
21 elicited on direct.

22 You may proceed.

23 **CROSS-EXAMINATION**

24 **BY MR. FRAUSTO:**

25 Q. Mr. Darter, do you consider the defendant your friend?

1 A. Yes, sir.

2 Q. And you didn't handle his financial, just -- financials;  
3 you just handled his personal taxes?

4 A. That is correct.

5 Q. And did you also handle the taxes prepared by  
6 Reagor-Dykes Auto Group?

7 A. Yes, sir.

8 Q. And about how much did RDAG or Reagor-Dykes Auto Group  
9 pay you each year to do those taxes?

10 A. It depended on which one of the entities. Each one was  
11 billed out separately. It was probably thirty, thirty-two  
12 thousand a year.

13 Q. Now, Mr. Powell asked you if you had conversations with  
14 the defendant about working capital. Shane Smith invited you  
15 to describe the need for working capital to the defendant; is  
16 that right?

17 A. That is correct.

18 Q. Now, let's go to your knowledge of the IBC loan. Do you  
19 have personal knowledge of this particular IBC loan?

20 A. No, sir.

21 Q. Have you ever read the IBC loan agreement?

22 A. I've not seen the agreement, period.

23 Q. Do you know the specifics, such as the purpose of the  
24 loan?

25 **MR. POWELL:** Judge, I'm going to object. The

1 witness has testified he doesn't know anything about the IBC  
2 document, and to continue asking him questions about the IBC  
3 document is irrelevant.

4 **THE COURT:** Response, Mr. Frausto?

5 **MR. FRAUSTO:** Your Honor, I asked if he read it. I  
6 want to know if he knew the purpose of the loan.

7 **MR. POWELL:** And it's outside the scope of direct  
8 examination, Your Honor. I didn't ask him one thing about  
9 the IBC contract.

10 **THE COURT:** Okay. So I'll sustain the objection,  
11 and the witness will be instructed not to answer. Because  
12 the witness says he has no familiarity with that particular  
13 loan agreement, we won't take any other questions, and it  
14 wasn't elicited on direct. So please onto your next  
15 question.

16 Q. **(By Mr. Frausto)** As the person that does taxes for the  
17 defendant, were you asked -- just were you asked how to  
18 structure the money that the defendant received?

19 A. No, sir.

20 **MR. POWELL:** Again, Judge, outside the scope of  
21 direct examination. The Court just ruled on that issue, and  
22 Mr. Frausto just asked him another question.

23 **THE COURT:** He didn't mention the loan agreement.  
24 Here, as his accountant, he does review financial statements,  
25 other records that is relevant, and it is within the scope of

1 his personal knowledge, so I will allow it.

2 But I will instruct the Government to keep it clean  
3 between the loan agreement and this witness' testimony as an  
4 accountant.

5 MR. POWELL: Yes, sir.

6 Q. (By Mr. Frausto) As far as the \$1.7 million that the  
7 defendant received from IBC, do you know how it was treated  
8 for tax purposes for the defendant?

9 A. It was treated as a distribution of capital.

10 MR. FRAUSTO: Pass the witness.

11 THE COURT: And redirect, Mr. Powell?

12 MR. POWELL: No, Your Honor. We pass the witness.

13 THE COURT: Okay. Any additional examination by  
14 the Government?

15 MR. FRAUSTO: No, Your Honor.

16 THE COURT: Mr. Powell, may this witness be  
17 excused?

18 MR. POWELL: Yes, Your Honor.

19 THE COURT: And does the Government object to this  
20 witness being excused?

21 MR. FRAUSTO: No, Your Honor.

22 THE COURT: Mr. Darter, you are excused, and please  
23 return the microphone.

24 (Witness leaves the stand.)

25 THE COURT: At this point, the Defendant may call

1 his next witness.

2 **MR. COGDELL:** Mr. Reagor stands on the presumption  
3 of innocence and rests, Your Honor.

4 **THE COURT:** Okay. So you will receive repeated  
5 instructions from this Court on various inferences and the  
6 rest that should be inferred. That will be in the jury  
7 charge.

8 At this moment, the Defendant has rested his case.  
9 I'll now afford Government an opportunity for rebuttal  
10 evidence, and that will be the last phase of this trial. So  
11 we're turning now to that phase.

12 Does the Government intend to present any rebuttal  
13 evidence?

14 **MR. HAAG:** Your Honor, the United States of America  
15 closes.

16 **THE COURT:** Okay. And does the Defendant close his  
17 case?

18 **MR. COGDELL:** We do, Your Honor.

19 **THE COURT:** Okay. At this point, we will take a  
20 break to do additional motions practice and a Charge  
21 Conference with the attorneys. And, at that point, we  
22 anticipate giving the jury the case unless anything develops  
23 during those conversations with counsel that would require  
24 additional time.

25 **MR. HAAG:** Your Honor, if I may, just to conserve



1 the jury's time, I've spoken with Mr. Cogdell, and I think it  
2 might be in the best interest of all parties if we do the  
3 jury charge for the rest of the day, and then we will do  
4 closing arguments at 8:00 tomorrow morning, if that's  
5 agreeable with the Court.

6 **THE COURT:** Okay. So the hour is almost 3:00. Mr.  
7 Cogdell, is that your assessment of the best use of resources  
8 and time?

9 **MR. COGDELL:** It is, Your Honor.

10 **THE COURT:** Okay. So good news. You will be  
11 dismissed early today. You have worked long hours from voir  
12 dire through testimony and evidence yesterday and thereby  
13 earned a hall pass at 3:00 on the second day.

14 So I -- everything from this point forward will be  
15 attorney work with the Court. It's related to the law, not  
16 the facts.

17 And so, at this point, I'll instruct the Court  
18 Security Officers, the Marshals, and court staff to excuse  
19 you for the remainder of the day, but I will give you the  
20 instruction that I've been giving you since the outset of  
21 this case.

22 You're now into day two. You've heard additional  
23 names. You've heard additional accounting terminology, legal  
24 terminology. You've heard from a law professor. It's a  
25 menagerie of personalities, terms.

1           Please resist the impulse to research this case  
2 independently. Everything you need to know, again, is within  
3 these four corners of this courtroom, so please resist that  
4 urge. I know it's a natural temptation in the age of Google  
5 and Internet searching.

6           Also, please do not speak about this case with one  
7 another, your family, your friends as you go home for the  
8 evening. Let's take this thing to closing argument, and then  
9 you will have the case in short order tomorrow.

10           So with those instructions and incorporating by  
11 reference the instructions that I gave you earlier, you are  
12 dismissed. Please keep your jury badge on as you're moving  
13 throughout the building. And you may leave your notes and  
14 pens. I will instruct court staff to secure those. They  
15 will be in your chair when you return tomorrow. You are  
16 dismissed.

17           **COURT SECURITY OFFICER:** All rise.

18           **(The jury recessed and leaves the courtroom.)**

19           **THE COURT:** And please be seated. Okay. At this  
20 point, Mr. Cogdell, I anticipate that the Defense will  
21 re-urge or I should say renew it's Rule 29 Motion for  
22 Judgment of Acquittal.

23           **MR. COGDELL:** You are, as always, correct. We move  
24 pursuant to Rule 29(b) of the Federal Code of Criminal  
25 Procedure for a Motion for Judgment of Acquittal on all

1 counts based upon the reality that, at the conclusion of all  
2 the evidence, there's not sufficient evidence for a rational  
3 jury to conclude the elements of each offense has been  
4 committed beyond a reasonable doubt.

5 **THE COURT:** Okay. I have your motion. And, Mr.  
6 Haag, a response from the Government?

7 **MR. HAAG:** Yes, Your Honor. The United States will  
8 incorporate the arguments that are set forth in its trial  
9 brief, and we believe the motion should be denied.

10 **THE COURT:** Okay. And, here, the Court denies the  
11 Defendant's Motion for Judgment of Acquittal pursuant to  
12 Federal Rule of Criminal Procedure 29(a), and the Court does  
13 separately and independently determine that the evidence  
14 presented is sufficient to sustain a conviction on all four  
15 counts of the Indictment, as required by those rules, and  
16 that this case may proceed to the jury.

17 And, at this point, is there any housekeeping  
18 before we go into a Charge Conference, or do the attorneys  
19 want a break, given that I dropped a new Westlaw case on you  
20 at the last conference.

21 **MR. COGDELL:** I'd like a break, Your Honor, and,  
22 beyond that, with the permission of the Court and my client,  
23 Mr. Reagor, I'm going to let our competent team, more than  
24 competent team handle the jury charge issues. I'm going to  
25 retire to my hotel to begin working on my final argument.

1 I'm pretty slow at creating those things. So with the  
2 Court's permission?

3 **THE COURT:** Yes, it's your prerogative. Who will  
4 take lead from this point forward into the Charge Conference?

5 **MR. COGDELL:** Mr. Norris. He's the biggest guy  
6 here.

7 **THE COURT:** Okay. All right. Mr. Norris, I'll  
8 look for you at the Charge Conference.

9 We're also going to take time to print copies.  
10 We've combined the requested instructions from both parties.  
11 As promised, there will be one consolidated copy. We're  
12 well ahead in that process.

13 I will admonish both sides to be prepared to argue  
14 unanimity. So here we go again. I know at least three of us  
15 have been in this courtroom arguing jury charge before, and  
16 so we'll do that process. Just be prepared to make those  
17 arguments.

18 Is thirty minutes sufficient for everybody to  
19 prepare for the Charge Conference and any other cleanup and  
20 housekeeping that we need to do before we go to closing  
21 arguments tomorrow morning?

22 **MR. COGDELL:** Could you give forty-five, Your  
23 Honor?

24 **THE COURT:** I'll give you an hour. We will return  
25 to court at 4:00. I actually don't anticipate the Charge

1 Conference taking that long.

2 I'll also inquire about any other findings the  
3 Court needs to make before we go into closing arguments  
4 relevant to the Fifth Amendment, any witnesses, things like  
5 that. I think we can actually get that done easily within  
6 two hours.

7 So I'll instruct the parties, counsel, to return at  
8 4:00. And, Mr. Cogdell, from this point forward, you are  
9 excused until tomorrow morning.

10 MR. COGDELL: Thank you, Your Honor.

11 MR. HAAG: Thank you, Your Honor.

12 COURT SECURITY OFFICER: All rise.

13 (Recess.)

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17 (Charge Conference held and filed under separate volume  
18 in Trial Volume III of IV)

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20

21 I certify that the foregoing is a correct transcript  
22 from the record of proceedings in the above-entitled matter.  
23 I further certify that the transcript fees format comply with  
24 those prescribed by the Court and the Judicial Conference of  
25 the United States.

24 s/Stacy Mayes Morrison  
25 Stacy Mayes Morrison  
Official Court Reporter

11/10/2021  
Date

Stacy Mayes Morrison  
Official Court Reporter